TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 474.

THOMAS F. HUNTER, SHERIFF OF BUNCOMBE COUNTY, STATE OF NORTH CAROLINA, APPELLANT,

vs.

JAMES H. WOOD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

FILED OCTOBER 5, 1907.

(20,877.)

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1 *Transcript of Record.*

Supreme Court of the United States.

In the Matter of the Application of JAMES H. WOOD for Writ of *Habeas Corpus.*

2 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Western District of North Carolina, To wit:

At a Circuit Court of the United States for the Western District of North Carolina, begun and held at the Court House in the City of Asheville on the 22nd, day of July in the Year of Our Lord One thousand nine hundred and seven.

Present: The Honorable J. C. Pritchard, Circuit Judge.

Among other were the following proceedings, to-wit:—

In the Matter of Application of JAMES H. WOOD for a Writ of *Habeas Corpus.*

3 *Petition of J. H. Wood.*

U. S. Circuit Court. Filed Jul- 19, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States, Western District of North Carolina.

In the Matter of the Application of JAMES H. WOOD for a Writ of *Habeas Corpus.*

To the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States, Fourth Circuit:

Your petitioner Jas. H. Wood, respectfully states as follows:—

Your petitioner is a citizen of the State of North Carolina and a resident of the City of Asheville, County of Buncombe, and the Western District of said State, and has been unlawfully arrested, and is unjustly and unlawfully detained in the custody of Thomas F. Hunter who is the Sheriff of Buncombe County of the State of North Carolina, by virtue of a mittimus issued by one, G. S. Reynolds, Police Justice of the Police Justice's Court of the City of Asheville, County of Buncombe and State of North Carolina, a copy of which mittimus is hereto attached marked "Exhibit "A" and made a part hereof.

On the 17th day of July, 1907, one G. S. Reynolds, Police Justice of the Police Justice's Court of the City of Asheville, County of Buncombe and State of North Carolina, upon the complaint upon oath of one T. J. Harmon, made to him, issued his war-

rant directed to the Chief of Police or any Policeman of the City of Asheville, or other lawful officer of said City or Buncombe County, commanding him or them to arrest the body of James H. Wood, your petitioner, and one O. C. Wilson, and them safely keep so that he or they have them before the said G. S. Reynolds, Police Justice as aforesaid, at 9 o'clock, A. M., on the 18th day of July, 1907 then to answer the charge above set forth; that is, the charge set forth in the complaint, a copy of which complaint and of said warrant is hereto attached, marked Exhibit "B," and hereby made a part hereof.

4 Said Warrant charges that your petitioner as "agent of Southern Railway Company, did unlawfully and wilfully overcharge the said T. J. Harmon for a Railroad ticket from Asheville, North Carolina, to Canton, North Carolina, in violation of the State law and contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State."

Said warrant was issued by said Police Justice, was placed for execution in the hands of said Thomas F. Hunter, Sheriff of Buncombe County, North Carolina, who did, by virtue of the same and as commanded therein, arrest the body of your petitioner and take him into his custody on the 17th day of July, 1907, and retained the body of your petitioner in his custody until the hour of 9 *o'dock,* A. M., on the 18th Day of July 1907, at which time he, the said Thomas F. Hunter, as such Sheriff produced the body of your petitioner before said Police Justice's Court of the City of Asheville, in said County and State, when and where said Court, the said G. S. Reynolds, Police Justice, presiding therein, proceeded to try and inquire into the charges contained in said warrant against your petitioner, and did upon the conclusion of the said trial and inquiry adjudge that your petitioner, the defendant named in said warrant was guilty as charged in said warrant, and thereupon considered and adjudged that your petitioner be imprisoned in the County jail of Buncombe County for a term of thirty days, and upon application of the Board of County Commissioners of Buncombe County that he be duly assigned to them to be worked on the public roads of said County for such term, and that he pay all costs and be discharged according to law.

Upon the rendition of said judgment against your petitioner by said police Justice's Court there was issued by said Court said mittimus above referred to, a copy of which is hereto attached marked Exhibit "A," and made a part hereof, and the same was immediately delivered into the hands of the said Thomas F. Hunter, Sheriff as aforesaid, who immediately arrested and took into his custody the body of your petitioner and still holds the body of your petitioner in such custody and will continue to so detain and *and* hold — his custody the body of your petitioner unless prevented from so doing by the action of this Honorable Court.

5 Your petitioner further states that when called upon to plead in said Police Justice's Court to the charges contained in said warrant he duly made and filed therein his written plea and answer to said charge 1st., that he was not guilty of the

charges contained in said warrant 2nd. that said Court had no jurisdiction of the offense charged against him in said warrant; 3rd, that he was in the custody of said Sheriff of Buncombe County and held at the bar of said Court to answer to the charge contained in said warrant, as aforesaid, in violation of the Constitution and laws of the United States and for an act done by him in pursuance of the decree of the Circuit Court of the United States, and he specially further pleaded in his defense all the matters and things in this petition shown, and hereinbelow stated.

6 Your petitioner is in custody as aforesaid in violation of the Constitution and laws of the United States, and for an act done in pursuance of a decree of the Circuit Court of the United States.

The General Assembly of North Carolina passed an act entitled "An act to prevent unjust discrimination in freight rates and to fix maximum charges therefor," which was ratified on the ninth day of March, 1907, and is hereinafter referred to as the "Act in respect of freight rates." The said act provided, among other things, for the reduction of the joint rates to be charged by common carriers for transporting freight in North Carolina.

The General Assembly of North Carolina also passed an act entitled "An act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," which Act was ratified on the second day of March, 1907, and is hereinafter referred to as the "Act in respect to passenger rates." Said act provided, among other things, that no railroad company doing business as a common carrier of passengers in the State of North Carolina, except as therein provided, should charge or receive for transporting any passengers, and his or her baggage not exceeding in weight two hundred pounds, from any station on its railroad in North Carolina to any other station on its railroad in North Carolina, a rate in excess of two and one-fourth cents per mile, and for transporting children twelve years of age or under, one-half of the rate above described. Said act, among other things, further provided, by section 4 thereof, that any agent, servant, or employee of any railroad company violating the said act should be guilty of a misdemeanor, and upon conviction should be fined or imprisoned, or both, in the discretion of the court. Said act in respect to passenger rates is the act for the violation of which your petitioner has been indicted and arrested and is in custody as aforesaid.

7 Each of said acts provided that it should be in force from and after July 1, 1907.

On the eighth day of May, 1907, the Southern Railway Company, a corporation and a citizen of the State of Virginia, filed its bill of complaint in the Circuit Court of the United States for the Eastern District of North Carolina against Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and Robert D. Gilmer, the Attorney-General of North Carolina, and Hayden Clement, the Assistant Attorney-General of North Carolina, and by said bill of com-

plaint alleged that the effect of the said acts, whether taken separately or together, if enforced, would, under the facts and for the various reasons set forth in said bill, deprive said complainant of its property without just compensation, and without due process of law, and would deny to complainant the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States. A true copy of said bill of complaint is hereto attached and made part hereof, marked Exhibit "C." The said bill of complaint truly sets forth in full the said Act in respect to freight rates and the said Act in respect to passenger rates.

Upon the filing of said bill process was duly issued against, and served upon, the defendants named therein. Thereupon said cause came on to be heard before Honorable J. C. Pritchard, Judge of the said Circuit Court, upon the motion of the complainant for an interlocutory injunction, in accordance with the prayer in the said bill of complaint, and each and all of the said defendants appeared generally thereto and filed their answer therein, and upon a full hearing of said motion a decree was entered in said cause on the 29th day of June, 1907, a copy of which is hereto attached and made part hereof, marked Exhibit "D."

By said decree the defendants Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constituting the said Corporation Commission, and each of them individually, and jointly, as constituting the said Corporation Commission, and their successors, agents and employees, were enjoined and restrained from preparing or publishing the tariff of rates mentioned in the fifth section of said Act in respect to freight rates, and from classifying the railroads in accordance with and from publishing the rates fixed by said Act in respect to passenger rates, and were further enjoined together with the defendants Robert D. Gilmer, Attorney-General, and Hayden Clement, Assistant Attorney-General, their successors, attorneys, agents and employees, from taking any steps in pursuance of either of said acts or of any of the laws of the State of North Carolina, for the purpose of enforcing or endeavoring
8 to put into effect, as against said complainant or any of its officers, agents or employees, or to force said complainant or any of its agents or employees to put into effect either of said Acts or any part thereof, or the penalties prescribed or provided for in either of said Acts, or any other penalties or punishments against said complainant, or against any of its officers, agents or employees, for failure to put into effect or to observe on any of the lines of said complainant in North Carolina the freight rates or passenger rates prescribed or provided for in said Acts, or either of them, or for failure to comply with either of said Acts, or with any provision of either of them. By said decree all other individuals and corporations were, and each of them was, restrained and enjoined from instituting or prosecuting any suit of prosecution, or other proceeding, either civil or criminal, against said complainant or against any officer, agent or employee of said complainant, for the recovery or imposition of any penalty or punishment under or by virtue of

said Act in respect to passenger rates, or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of the said complainant, or any of its officers, agents or employees, to put into effect, or to observe, on any of the said complainant's lines in North Carolina the passenger rates prescribed in said Act in respect to passenger rates, or to comply with any of the provisions of said Act, or for the recovery of any damages or overcharges, because of, or growing out of any such failure, or for the enforcement of any claim, alleged right or cause of action growing out of or connected with any such failure.

Said decree further provided that said complainant should, before a Judge of said court, or the Clerk thereof, execute a bond in the penalty of three hundred and twenty-five thousand dollars, with surety to be approved by such Judge or Clerk, conditioned to pay into the registry of the court from time to time, as ordered by the court, such sums of money as should be equal to the difference between the aggregate freight and passenger rates and excess baggage charges charged and received by it for intrastate services on its lines in the State of North Carolina, and what would have been the aggregate amount for such services at the rates fixed in or under said acts, and further conditioned to pay, in the event such injunction should be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, all damages caused by the issue of such injunction and the costs of this cause in connection therewith.

Said decree further provided that the complainant should give to any person purchasing a ticket for intrastate travel on its lines in North Carolina a transferable coupon, or other written or printed evidence, representing the sum which such person, or his
9 transferee, would, upon a final decision in said cause upholding the validity of said Act in respect to passenger rates, be entitled to receive out of the case deposit to be made in the registry of this court, in pursuance of the obligation of said bond. And said decree prescribed the form of said coupon or other written or printed evidence which should be substantially followed and used by said complainant.

Said decree further provided that the complainant should preserve, to be produced when so ordered by the court, all canceled tickets in respect to which such coupons, or other written or printed evidence, should be issued and outstanding, and should, from time to time, report to the court statements showing the revenues by it charged and collected for its services in the North Carolina intrastate transportation of passengers, baggage and freight in excess of the amount permitted by said Acts.

Upon the entry of said decree the complainant executed before the Judge of said court the bond provided for in said decree, and said bond and the surety thereon were duly approved by such Judge, and thereupon a writ of injunction was issued, as provided in said decree.

Ever since the entry of said decree on June 29, 1907, the same, and the writ of injunction issued thereunder, have been, and now are, in full force and effect in all respects, and neither said decree nor said writ of injunction has been modified in any way.

Your petitioner is an employee, to-wit, a District Passenger Agent of said complainant, Southern Railway Company, at Asheville, in the State of North Carolina in said Western District.

Your petitioner further showeth to this Honorable Court, that the Southern Railway Company, the Complainant, in the said original Bill has duly filed in the Circuit Court of the United States for the Western District of North Carolina, at Asheville, an Ancillary Bill, wherein the Southern Railway is complainant, and Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, con-cituting the Corporation Commission of North Carolina, and each of them individually and jointly, as constituting said Corporation Commission, and each and all of their successors in office, their and each of their attorneys, agents and employees, and the defendants Robert B. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, and J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley W. M. Hooker, Charles A. Armstrong, L. F. Nance Spencer Howell, Robert Howell, Coon Howell Henry Smitherman, Jessee Eldridge, Claude Howell Wallace Armstrong, Guy Smitherman, J. Way and B. C. Beckwith, and in which said ancillary bill all of the proceedings of the original bill were set out, and this Honorable Court has taken jurisdiction in the Western District in aid of the original bill. A true copy of said ancillary bill is hereto attached and made part hereof, marked Exhibit "E."

10 Your petitioner has in all respects complied with said decree, and with respect to the transaction attempted to be set up in the said indictment the things done by this petitioner were done by him in compliance with and in pursuance of said decree.

The question of the validity of said Act in respect to passenger rates, is one of which full jurisdiction has been rightfully taken by said Circuit Court in the suit above described, and any effort to enforce the provisions of said act by indictment in another form necessarily interferes with and if successful will defeat the jurisdiction and control of said Circuit Court over the said controversy.

If for any reason it should be adjudged that it is the intent and effect of the laws of North Carolina that there can be no such judicial review as is involved in said cause of the constitutionality of said act in respect to passenger rates, or that notwithstanding such judicial review the penalties and punishments prescribed in section four of said Act in respect to passenger rates may be imposed and inflicted for acts done during the pendency of said judicial review and under the protection of the court having jurisdiction thereof, then the provisions of said section four of the Act in respect to passenger rates imposing penalties and punishments are unconstitutional and void because in conflict with the fourteenth amend-

ment to the Constitution of the United States, the benefit and protection of which petitioner hereby sets up and claims.

Your petitioner further states that the Police Justices' Court — the City of Asheville, said county of Buncombe, State of North Carolina, in which the said conviction was had was without jurisdiction of the offence charged.

Wherefore, to be relieved of said unlawful detention your petitioner prays that a writ of *habeas corpus*, to be directed to the said Thomas F. Hunter may issue in this behalf, so that your petitioner may be forthwith brought before Your Honor, to do, submit to, and receive what the law may direct.

JAMES H. WOOD.

STATE OF NORTH CAROLINA,
County of Buncombe, To wit;

James H. Wood being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same, knows the contents thereof, and that the said statements are true, as he verily believes.

Sworn to before me and subscribed, this 18″ day of July, 1907.

[SEAL.] JOSEPH F. FOARD,
Notary Public in and for Buncombe County, North Carolina.

My Commission expires April 23, 1909.

11 *Coupon.*

U. S. Circuit Court. Filed Jul- 19, 1907. W. S. Hyams, Clerk.

"L" Punch Marks in this Blank Space Indicate Nothing.

Form N. C. Lo. 25.

S. R. Issued by Southern Railway Co.

North Carolina Ticket Claim Coupon.

Issued at (228) Asheville "B." N. C.

To Be Retained by Passenger—Not Good for Passage.

Issued under an order of the Circuit Court of the United States for the Eastern District of North Carolina, in a suit therein pending between Southern Railway Company, Complainant, and Franklin McNeill, *et als.*, Defendants.

Southern Railway Company, has on the date stamped hereon, received in connection with the sale of the ticket of corresponding form and number, the rate designated in the tariff of this Company in effect on date of sale, for travel between points designated in such ticket within the State of North Carolina, to which ticket this coupon is attached.

This coupon is evidence only of a claim for the difference between the amount received and what would have been the amount if the distance covered by said ticket had been paid for at the rate fixed by North Carolina Act approved March 2, 1907, prescribing maximum passenger charges, and is payable only on the order, and out of the registry, of said court, upon surrender to the court of this coupon, and upon such conditions, if any, as said Court may impose, provided it should be finally determined in said suit that the said claim is entitled to such payment.

421.

In case the ticket with which this coupon corresponds is presented for redemption, it must be presented at General Passenger office, Washington, D. C., accompanied by this coupon, either for surrender or for appropriate notation.

W. H. TAYLOE,
General Passenger Agent.

Endorsed on the back: Southern Railway Co., Asheville, N. C. Jul- 14, 1907.

12 EXHIBIT A—MITTIMUS.

U. S. Circuit Court. Filed Jul- 19, 1907. W. S. Hyams, Clerk.

STATE OF NORTH CAROLINA,
Buncombe County, City of Asheville:

In Police Court.

STATE AND CITY
vs.
J. H. WOOD.

This is to certify that — a Police Court held in and for the City of Asheville on this the 18 day of July 1907, J. H. Wood was tried and convicted of the offence of overcharging R. R. ticket, and was duly sentenced by the Court to imprisonment in the County jail of Buncombe County for a term of 30 days and upon application of the *of the* Board of County Commissioners of Buncombe County, said J. H. Wood is duly assigned to them to be worked on the public roads of said County for such term, pay all costs and be discharged according to law.

G. S. REYNOLDS, *P. J.*

13 EXHIBIT B.

Warrant & Summons for Violating State Laws.

U. S. Circuit Court. Filed Jul- 19, 1907. W. S. Hyams, Clerk.

NORTH CAROLINA,
Buncombe County, City of Asheville:

Police Justice's Court.

Charge: Violation of Ordinance No. —.

T. J. Harmon Maketh oath that on or about the 14th day of July 1907, in the City of Asheville, North Carolina, J. H. Wood, Agent of Southern Railway Co., and O. C. Wilson, Agent Southern Railway Co. did unlawfully and wilfully overcharge said affiant for a railroad ticket from Asheville, N. C. to Canton, N. C. in violation of State law, and contrary to the form and statute in such cases made and provided, and against the peace and dignity of the State.

T. J. HARMON.

Sworn to and subscribed before me, this the 17 day of July 1907.

G. S. REYNOLDS,
Police Justice.

State of North Carolina to the chief of police or any policeman of the city of Asheville, or other lawful officer of said city or Buncombe County, Greeting:

We command you to arrest the bodies of J. H. Wood and O. C. Wilson and them safely keep so that you have them before me at 9 o'clock A. M. on the 18 day of July 1907, then and there to answer the *the* charge above set forth.

G. S. REYNOLDS,
Police Justice.

Endorsed: State and City of Asheville *vs.* J. H. Wood & O. C. Wilson. Warrant and Summons for violation ordinance No. —. Before G. S. Reynolds, P. J. Officer's return. The within warrant received this 17 day of July, 1907. Executed 17 day of July, 1907, by arresting J. H. Wood and O. C. Wilson and bringing before G. S. Reynolds, P. J., for trial at 9 o'clock A. M. 18 day of July. T. F. Hunter, Sheriff. C. F. Williams, C. P.

14 EXHIBIT C.

#675.

Original.

In the Circuit Court of the United States for the Eastern District of North Carolina, to-wit:

In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, Defendants.

Bill of Complaint.

Claudian B. Northrop, W. B. Rodman, solicitors for complainant.
Francis Lynde Stetson, Alex. P. Humphrey, Walker D. Hines, Alfred P. Thom, of counsel.
Filed May 9, 1907, H. L. Grant, clerk.
Office of U. S. Marshal, Raleigh, N. C., May 9, 1907.

15 In the Circuit Court of the United States for the Eastern District of North Carolina, to-wit:

In Equity.

SOUTHERN RAILROAD COMPANY, Complainant,

v.

FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, Defendants.

To the Honorable Judges of said Court:

The bill of complaint of Southern Railway Company, a corporation of the State of Virginia, duly organized and existing under and by virtue of the laws of that State, having its principal office in the city of Richmond, in the State of Virginia, and being a citizen of said State, against Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, and Hayden Clement, defendants, all of said defendants being citizens of the State of North Carolina.

And thereupon your complainant says:

1. The citizenship of the parties complainant and defendant is as above set forth.

2. That in the year 1894, under an act of the General Assembly of the State of Virginia, approved February 20, 1894, entitled "An Act authorizing the purchasers of the Richmond and Danville Railroad, their assigns and successors, to become and be a cor-
16 poration, to adopt a name therefor, and to possess and exercise general powers; and authorizing the leasing to or by, and the consolidation therewith of, other corporations," the complainant was duly incorporated and organized into a railroad corporation. A true copy of its said charter is herewith filed as a part of this bill, marked Exhibit No. 1.

3. That by the terms of its charter it was authorized to own, operate and control lines of railroad in other States as well as in Virginia, and under and by virtue of such powers, and under and by virtue of due authority from the States about to be mentioned, the complainant owns, or controls and operates, and continuously since its said organization has operated and controlled, lines of railroad (in addition to those which it owns, operates and controls in the State of Virginia) in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Indiana and Illinois. That portion of its road lying in the State of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi and Tennessee comprises lines 6989.12 miles in length and constitutes a continuous system of railroads, and that portion of its lines lying in the States of Kentucky, Indiana and Illinois comprises lines 526.73 miles in length and constitutes another continuous system of railroads. These two systems are not connected by rails owned by this complainant, but are connected

by traffic arrangement with another line of road. That portion of its road which it so owns, or controls and operates, in the State of North Carolina is 1,456.72 miles in length, and for a considerable number of years has been more than 1,400 miles.

4. That the complainant is, and continuously since its organization aforesaid has been, engaged in doing an intrastate business as a common carrier or freight and passenger in the State of North Carolina, and in addition is, and continuously since its said organization has been, engaged in doing, as a common carrier of freight and passengers, a large interstate business in said State of North Carolina, and in and between said State and the other States aforesaid, and other States of the United States, and in and between other States and Territories of the United States, and also is, and since its said organization has been, engaged in said State and the other States aforesaid in foreign commerce.

5. That at its session held in the year 1907, and just ended, the General Assembly of North Carolina passed an act entitled "An Act to prevent unjust discrimination in freight rates and to
17 fix maximum charges therefor." The said act was ratified on the ninth day of March, 1907, and is hereinafter referred to as the "Act in respect to Freight Rates." The said act is as follows:

An act to prevent unjust discrimination in freight rates and to fix the maximum charges therefor.

The General Assembly of North Carolina do enact:

SECTION 1. That the Corporation Commission, created by the laws of North Carolina, shall not, in fixing the maximum rates and charges, or tariff or rates or charges for any common carrier transporting freight in North Carolina, permit or allow any such common carrier to charge, collect or receive a greater toll, charge or rate for the transportation of any article of freight or commodity embraced in the present classification fixed and prescribed, or approved by said Corporation Commission where the initial point of shipment is on the road or line of one common carrier in this state and the terminal point of said shipment is on the line or road of another common carrier in this state, than is the sum of the present local rates now established, prescribed or approved by said Corporation Commission, less a reduction of twenty-five per centum of the said local rates on all railroads for which there is now made or prescribed a reduction for a joint haul; and on those railroads for which there is not now prescribed a reduction on joint hauls a reduction of fifteen per centum of the local rates now established, prescribed or approved by said Corporation Commission for said railroads; Provided that those railroads of this class whose rates are lower than the Corporation Commission's standard of freight rates may be permitted by said commission to adopt the standard rates prescribed by said commission; Provided that the Corporation Commission is hereby empowered to reduce the said local rates whenever in its opinion and after investigation by it it shall determine that a lower

rate is reasonable: Provided, further, That present local rates now established, prescribed or approved by said Corporation Commission shall not be increased by classification or otherwise.

SECTION 2. That any railroad company doing business in the State of North Carolina, or officer or agent thereof, who shall give to any person or shipper any advantage over another person or shipper under like circumstances by way of any rebate or reduced rate not authorized by law, or by the North Carolina Corporation Commission, or which shall make charges for shipments of freight in violation of the provisions of this act, or shall wilfully discriminate in the matter of service in favor of one person or corporation against another under like circumstances, shall be guilty of a misdemeanor, and such corporation shall, upon conviction, be fined not
18 less than one hundred dollars, and such officer or agent shall be fined or imprisoned or both, in the discretion of the court; and any shipper or consignee of any freight in the State of North Carolina who shall knowingly accept any rebate or other consideration or service from any railroad company which is not allowed or given other shippers or consignees under like or similar circumstances, and which is not allowed by law, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.

SECTION 3. That whenever any person, firm or corporation intending to ship freight makes a written application to any railroad company for a car or cars to be loaded in carload lots with any kind of freight embraced in the tariffs of said company, stating in said application the character of the freight, the number of cars wanted, the station, depot siding, wharf or boat landing on the road or line of said railroad company whence the shipment is to be moved, and its final destination, the railroad company shall furnish the said car or cars within four days from seven o'clock a. m. the day following such application, which said application shall be delivered to the agent of the railroad company at the station at or nearest the point of shipment. Any railroad company failing to furnish the car or cars named in said written application shall be subject to a penalty of five dollars per car per day for each car not furnished, to be recovered by the person, firm or corporation making said application: Provided that the said railroad company before furnishing the car or cars upon said application of the shipper may require the person, firm or corporation applying for the same to deposit five dollars for each car so demanded at the time the application is made, which said deposit of five dollars for each car may be retained by the said railroad company as a forfeit for trackage, in case the car or cars are not loaded within forty-eight hours after notice of the placing of said car or cars in accordance with said demand: Provided that the Corporation Commission may excuse from the penalties imposed by this section independent lines not owned, operated or controlled by any other line or system when trackage is less than one hundred miles.

SECTION 4. That section two thousand six hundred and thirty-two of the Revisal of one thousand nine hundred and five of North Carolina be, and the same is hereby amended as follows: By striking

out the words "twenty-five" in line eleven of said act and inserting in lieu thereof the word "fifteen," and by striking out the word "five," the last word in said line, and inserting in lieu thereof the word "two," and by further striking out the words "twelve and fifty one-hundredth-" in lines fourteen and fifteen thereof and inserting in lieu thereof the word "ten," and by further striking out the words "two and fifty one-hundredth-" in line fifteen and inserting in lieu thereof the word "one."

That this section four shall not apply to existing causes of action.

SECTION 5. The Corporation Commission is hereby directed to prepare and publish the tariff of rates, charges and tolls to be charged and collected by railroad companies in this State, as authorized by this act, on or before July the first, one thousand nine hundred and seven.

SECTION 6. This act shall be in force from and after July the first, one thousand nine hundred and seven.

In the General Assembly read three times and ratified this the 9th day of March, 1907.

That the General Assembly of North Carolina, at its said session, also passed an act entitled "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," which was ratified on the 2d day of March in the year 1907, and is hereinafter referred to as the "Act in respect to Passenger Rates." Said act is as follows:

An act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina.

The General Assembly of North Carolina do enact:

SECTION 1. That no railroad company doing business as a common carrier of passengers in the State of North Carolina, except as hereinafter provided, shall charge, demand or receive for transporting any passenger, and his or her baggage not exceeding in weight two hundred pounds, from any station on its railroad in North Carolina to any other station on its said road in North Carolina, a rate in excess of two and one-quarter cents per mile, and for transporting children twelve years of age or under, one-half of the rate above described: Provided that the Corporation Commission of North Carolina is hereby authorized and empowered to permit all independently owned and operated railroad companies in North Carolina, whose mileage of road in said State is sixty miles or under, to charge a rate for transporting passengers not in excess of the present rate fixed and prescribed for said road; and also to permit all railroads constructed within the twelve months preceding the first day of January, nineteen hundred and seven, or at that time in course of construction, for a term of two years from and after July 1st, 1907, and also such railroads as may be constructed within two years from January 1, 1907, to charge such rate in excess of the rate above prescribed as the said Commission may determine to be reasonable. A

charge of ten cents may be added to the fare of any passenger when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train; and no railroad company shall be required to accept a single fare for less than five cents.

SECTION 2. In the case that any railroad company operating as a common carrier of passengers in the State of North Carolina is owned, controlled or operated by lease or other agreement by any other railroad company doing business in this State, the rate for carrying passengers thereon as prescribed in this act shall be determined for said railroad by the rate prescribed by this act for the railroad company which owns, controls or operates the same; and the North Carolina Corporation Commission shall publish the rates fixed by this act for the several railroad companies operating in this State, on or before the first day of June 1907.

SECTION 3. That mileage books of one thousand miles in each book shall be kept on sale at such railroad ticket offices in North Carolina as shall be named and designated by the Corporation Commission of North Carolina, and when such mileage book is purchased it shall be good in the hands of any person or persons named therein on all railroads on which the fare is the same as or less than the fare on the road of the company selling such mileage book; and when the mileage is detached from said book by any other railroad company than the one which sold it, the said mileage shall be redeemable on demand by the railroad company which sold it.

SECTION 4. That any railroad company violating any provision of this act shall be liable to a penalty of five hundred dollars for each violation, payable to the person aggrieved by such violation, and recoverable in an action to be instituted in the name of said person in any court of this State having competent jurisdiction thereof. And any agent, servant, or employé of any railroad company violating this act shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the Court.

SECTION 5. That any person or persons, except those permitted by law, who accept free transportation shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the Court.

SECTION 6. That section 2618 of the Revisal of 1905 is hereby repealed, and all laws and clauses of laws in conflict with this act are hereby repealed.

SECTION 7. That this act shall be in force from and after July 1st, 1907.

6. At its session held in the year 1899 the General Assembly of North Carolina passed an act entitled "An Act to establish the North Carolina Corporation Commission." Said act has been since amended and as amended provides for the election of three commissioners who shall be known as the North Carolina Corporation Commission, and that each of said commissioners shall take an oath to support the constitution and laws of the state

of North Carolina and to well and faithfully execute the duties of his office as a member of the North Carolina Corporation Commission. Said act, as so amended, further provides that said commissioners shall have such general control and supervision of all railroad companies or corporations engaged in the carrying of freight or passengers necessary to carry into effect the provisions of said act and shall have full power to obtain the information necessary for carrying into effect, and otherwise enforcing, the provisions of said act. Said act, as so amended, further provides that if any railroad doing business in the state of North Carolina, or if any such company organized under the laws of any other state and doing business in the state of North Carolina shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, such railroad or company shall be deemed guilty of extortion and upon conviction thereof shall be fined not less than five hundred dollars nor more than five thousand dollars. Said act, as so amended, further provides that any railroad or corporation which violates any of the provisions of said act, or refuses to conform to, or obey, any rule, order or regulation of said commission shall in addition to the other penalties prescribed in said act forfeit and pay the sum of five hundred dollars for each offense to be recovered in an action to be instituted in the Superior Court of Wake county in the name of the state of North Carolina on the relation of the North Carolina corporation commission, and that each day such company, or corporation, continues to violate any provision of said act or continues to refuse to obey or perform any rule, order or regulation prescribed by said North Carolina Corporation Commission shall be a separate offense. Said act, as so amended, further provides that said corporation commission whenever in its judgment any corporation has violated or neglected in any respect to comply with the provisions of any law of the state, shall give notice thereof in writing to such corporations, and, if the violation or neglect is continued after such notice, shall forthwith present the facts to the attorney general who shall take such proceedings thereon as he may deem expedient. By the laws of North Carolina the Assistant Attorney General is invested with the same powers, and is required to perform the same duties, as the Attorney General, among them being the powers and duties just mentioned as appertaining to the Attorney General.

22 7. That the above mentioned defendants, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constitute the Corporation Commission of the State of North Carolina, the said Franklin McNeill being Chairman, and the said Samuel L. Rogers and Eugene C. Bedingfield being associate members, thereof, and that the defendant Robert D. Gilmer is the Attorney General of the State of North Carolina and the defendant Hayden Clement is the Assistant Attorney General of said State; and all of said defendants have their offices in the city of Raleigh in the State of North Carolina, and the defendants Franklin McNeill, Eugene C. Beddingfield and Robert D. Gilmer are inhabitants of, and reside in, the Eastern District of North Carolina.

8. That the effect of said "Act in respect to Freight Rates" and of the said "Act in respect to Passenger Rates," whether taken separately or together, if enforced, would, as will appear from the considerations now about to be set forth, be to deprive the complainant of its property without just compensation, and without due process of law, and to deny to it the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which the complainant respectfully sets up and claims.

The existing rates and charges in effect upon this complainant's lines in the State of North Carolina, and applicable to intrastate business in said State, are not higher than is just and reasonable, whether considered in respect to the value of the property used in the public intrastate service in said State, or in respect to the value of the service rendered to the shippers or to the travelers upon its lines. These rates and charges now in use on complainant's lines in North Carolina are, in respect to the traffic covered by the said "Act in respect to Freight Rates," the sum of the present local rates, now established, prescribed or approved by the said Corporation Commission, less a reduction of fifteen per cent. of the said local rates, and, in respect to passenger traffic covered by the said "Act in respect to Passenger Rates" are the rates and charges now established, prescribed and approved by the said Corporation Commission, namely, three and one fourth cents per mile for first class fare, and two and three fourths cents per mile for second class fare.

The complainant further shows that the effect of the said "Act in respect to Freight Rates," and of the said "Act in respect to Passenger Rates," now proposed to be put into effect, upon the business of this complainant between points both of which are
23 in the State of North Carolina, and which does not pass out of said State en route, for the year ending June 30, 1906, is as follows:

The maximum actual net earnings from North Carolina intrastate business for said year, after deducting the proper proportion of improvements and betterments not capitalized, and the proper proportion of taxes, were.....	$324,754.64
Whereas under the proposed rates and charges in North Carolina, such maximum net earnings on the business of the same year would have been.....	28,007.47
Showing a reduction of such actual net earnings from North Carolina intrastate business for said year under the proposed rates and charges of at least....	$296,747.17

The foregoing maximum actual net earnings are arrived at as follows:

The maximum earnings from intrastate traffic in North Carolina, after paying the cost of operation for said year amounted to		$453,811.41
The ratio of the intrastate gross traffic revenue in North Carolina for said year to the entire gross traffic revenue of the North Carolina lines of this complainant covering both inter and intra state traffic in North Carolina for said year, is	27.60%	
27.60% of the gross taxes ($269,651.18) paid in North Carolina by complainant in said year, is	$74,423.73	
27.60% of the improvements and betterments, not capitalized, chargeable to complainant's North Carolina properties during said year ($197,945.81), is	54,633.04	
Total taxes and improvements and betterments so chargeable against intrastate traffic		$129,056.77
Leaving maximum net intrastate earnings as above mentioned, after deducting the said proportion of taxes, improvements and betterments		$324,754.64

24 The complainant further shows that the effect of the establishment of the proposed rates and charges would not be limited to the intrastate business in North Carolina of this complainant but would inevitably affect the interstate business of this complainant and impair and diminish the revenue derived therefrom. This inevitably follows from the fact that many of its interstate rates on freight, and all, or nearly all, of its interstate rates for passengers, are made, and necessarily made, on a combination of locals, or by the use of locals as factors, and, where the local rate within the State of North Carolina is reduced, the inevitable effect upon the revenues of this complainant from its interstate business would be a reduction, and accordingly the total loss which this complainant would have to incur, in the event that the proposed rates and charges are made effective, would not be represented simply by the figures above given but a very considerable and appreciable loss would necessarily be added thereto, growing out of the reductions on its interstate business, as aforesaid.

In addition to this, the General Assembly of North Carolina, at its session of 1907, passed and enacted various other public statutes, the direct, immediate, and necessary effect of which will be to greatly increase the cost of the complainant's operations in that State, the titles of which said acts are as follows, namely:

"An Act to provide for the assessment of real estate of railroad companies in stock law territory for local benefit," ratified on the eighth day of March, 1907.

The effect of this act will be to impose a new and additional tax upon complainant's properties in North Carolina.

"An Act to prescribe the hours of service of employees of railroad companies engaged in the operation of trains," ratified on the eighth day of March, 1907.

The effect of this act will be to largely increase the cost of labor in complainant's intrastate operations in North Carolina.

"An Act to authorize the Corporation Commission to require railroads to erect and maintain union depots in towns of two thousand inhabitants," ratified on the eleventh day of March, 1907.

The effect of this act will be to impose large pecuniary burdens on the complainant in North Carolina.

"An Act to extend and enlarge the powers of the Corporation Commission," ratified on the eleventh day of March, 1907.

True copies of said acts are herewith filed as a part of this bill, marked Exhibits Nos. 2, 3, 4, and 5, respectively.

25 The complainant further shows that there is, in respect to this complainant's property, as in respect to all other classes of property in the State of North Carolina, whether owned by individuals or corporations, a difference between the commercial and the tax assessment value, the commercial value being, in respect to all classes of property, greater than the value assessed for purposes of taxation, and, while this complainant does not admit, and, in fact, expressly denies, that the tax value assessment is as great as the value which ought to be considered for the purpose of determining its right to make reasonable earnings out of, and reasonable returns on, the property used by it in doing its business as a common carrier, and performing the public service required of it, as such, the complainant is advised that the State of North Carolina, having made the assessment for the purpose of taxation upon the complainant's property in said State, cannot deny that its property in that State is worth at least the amount of said assessment, and, in fact, its property in North Carolina is worth more than the amount of said assessment and it would cost more to reproduce it. If, however, the earnings which it can make under the proposed rates and charges are estimated only in reference to the said assessed value of its said property made by the State of North Carolina for the purposes of taxation, the complainant avers that the proposed rates and charges will not permit it to earn reasonable profits, and enjoy reasonable returns, even upon that valuation, and such rates and charges will deprive it of the legitimate use of its property.

The ad valorem assessment upon the properties of the complainant in North Carolina during the year ending June 30, 1906, made by the State of North Carolina was..... $26,134,865.00

Taking the proportion of this valuation which is used for the purpose of producing revenue from intrastate traffic in North Carolina, in the ratio which the gross intrastate traffic revenue in North Carolina, bear to the total gross traffic revenue in the State of North Carolina, which is the proper proportion for such purpose, and is 27.60 per cent., the value of the property used in North Carolina for intrastate purposes, on the basis of North Carolina's assessment for purposes of taxation, is shown to be..... 7,213,222.74

Even upon this valuation, the net earnings permitted to this complainant under the proposed rates and charges from its intra-
26 state business in the State of North Carolina would, for the year ending June 30, 1906, only amount to thirty-nine one-hundredths of one per cent. on the said tax value, before allowing anything for payment of interest on its bonds or dividends on its stock. Such returns are not as much as a reasonable profit upon the invested capital, or upon the actual value of the property used.

The complainant further shows that the total bonded indebtedness of this complainant applicable to its North Carolina property on the basis of setting out to North Carolina all of such indebtedness that is specially a lien upon North Carolina properties, and a lien upon no other properties, and taking the North Carolina mileage proportion of the general bonded indebtedness of the complainant, is..... $24,623,078.29

On which the annual interest charge which complainant is obliged to pay is..... 714,103.08

And that the annual trackage and rentals paid for lines in North Carolina by the complainant amount to..... 481,189.99

The net income from intrastate traffic in North Carolina should contribute its *pro rata* proportion to the payment of such interest and rental charges, namely, at least 27.60 per cent., or the sum of..... 329,900.89

But the total net earnings from intrastate traffic in the State of North Carolina under the proposed rates and charges would amount to only the sum of..... 28,007.47

Which would leave a deficiency, after paying the amount properly apportionable to intrastate traffic in the State of North Carolina of such interest and rentals of..... 301,893.42

and no returns whatever to the owners of said property.

Complainant says that the figures given in this bill in respect to the result on its revenues for the year ending June 30, 1906, are in their net result fairly representative of past and future conditions, except that the operating expenses of the complainant have since June 30, 1906, increased relatively far more than gross earnings and that the net result will be even more unfavorable and yield a still smaller return to the complainant than is here shown for the year ending June 30, 1906.

The general commercial conditions in North Carolina are prosperous, the transportation service rendered by the complain-
27 ant in intrastate transportation is large, and at reasonable rates the returns therefor to this complainant would be much greater.

The complainant further shows that there will be no compensatory increase in the business or tonnage of this complainant resulting from the proposed reduced rates, and that there will be no appreciable or substantial increase whatever in such business or tonnage, due to such reduced rates.

The lines of railway of this complainant have at all times been operated as economically as practicable, under the existing conditions, and its operating expenses have at all times, under the conditions confronting it, been as reasonably low in amount as they could be made by economical and judicious management, and it has not been possible, under the conditions existing, for the complainant to operate its road for less than it has been operated. In all respects it has confined its operating expenses, its taxes, its interest, and every other expenditure, within the lowest and narrowest limit reasonably practicable under existing conditions. The complainant, therefore, respectfully shows to this Honorable Court that the result of the said rates and charges would be to deprive this complainant of its property without just compensation, to deprive it of the equal protection of the laws, and to take its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which it expressly sets up and claims.

9. Under the laws of the State of North Carolina, the Corporation Commission of that State is required to make reasonable and just rates of freight and passenger charges over the lines of railroad in that State, including the lines of the complainant, and, in pursuance of said duty, the said Commission did, prior to March 2, 1907, fix and establish rates of freight and passenger charges for this complainant which in the opinion of said Commission were reasonable and just, the rates so fixed by said Commission being, in respect to the freight traffic covered by said "Act in respect to Freight Rates," the sum of the locals less fifteen per cent., and being, in respect to the passenger travel covered by said "Act in respect to Passenger Rates" three and one-fourth cents per mile for first class, and two and three-fourth cents per mile for second class, and the rates so fixed by said Commission were in force, and were deemed by said Commission to be just and reasonable, at the time of the passage of said "Act in respect to Freight Rates," and said

"Act in respect to Passenger Rates." The complainant shows that since said rates were so fixed by the Commission the cost of performing the service by the complainant has largely increased,
28 and in consequence thereof said rates should, in order to be now just and reasonable, be increased instead of being decreased.

10. The complainant further shows that its present rates in North Carolina are not higher than a reasonable compensation for the service rendered by it to the shippers and to travelers on its lines, and are in no sense excessive or extortionate; that they are not unjustly, unduly, unreasonably or illegally discriminatory as between individuals, nor as between localities, nor as between different kinds of traffic, and that they in no way violate any law. The complainant is advised that it has, as an incident of its property and as a property right, the right to charge for each service which it renders a reasonable compensation, and that this complainant is protected by the Fourteenth Amendment to the Constitution of the United States in making receiving and collecting such charge. The effect of the proposed rates and charges would be to materially diminish this complainant's charges, and to reduce them greatly below what would be a reasonable compensation for the respective services rendered to the shippers and the travelers on its lines. The complainant is advised that to prevent it from charging a reasonable compensation for the service rendered the shipper or the traveler would be to deprive it of its property without just compensation, and without due process of law, and would be to deny to it the equal protection of the laws; and this complainant again claims, in this regard, the benefit and protection of the Fourteenth Amendment to the Constitution of the United States, and shows that if the proposed rates and charges are put into effect the result would be, as aforesaid, to deprive it of its property contrary to the said Fourteenth Amendment to the Constitution of the United States.

11. This complainant is further advised that it has, as an incident of its property and as a property right, the right to increase its charges whenever, under the circumstances then existing, its charges are less than a reasonable compensation for the service which it renders, and that what may be a reasonable charge today for a service may become an unreasonably low charge tomorrow, or at any time thereafter, if conditions in respect to the expense of the service, or other conditions, are so changed as to make it so. The complainant is therefore advised that any action by a State which attempts to fix a maximum charge beyond which the complainant cannot go, no matter how unreasonably low such maximum may become under changed conditions, would be to deprive the
29 complainant of its property right to increase its rate up to what would, under such changed conditions, be a reasonable compensation for the service rendered, and would, therefore, violate the Fourteenth Amendment to the Constitution of the United States. This complainant avers that the said "Act in respect to Freight Rates," and the said "Act in respect to Passenger Rates," both undertake to fix a maximum beyond which this complainant cannot

go, no matter what may be the circumstances, and that, therefore, said acts are unconstitutional and void, as being in violation of the Fourteenth Amendment to the Constitution of the United States. This complainant further shows that many of its existing rates are lower than is just compensation for the service rendered, and have heretofore yielded, and will continue to yield to the complainant much less than a reasonable return upon the value of its property employed in such service. Since they were fixed, the operating expenses of the complainant have, without its fault, been largely increased, the cost of equipment, of materials and supplies and of labor, necessary for its operation, having all largely increased, so that the net return to this complainant has become much less than it has heretofore been, and it is not now, and never has been, as much as this complainant is entitled to receive. All of said maximum rates fixed by the said acts of the General Assembly of North Carolina, both those in regard to freight, and those in regard to passengers, are lower than a just compensation for the service rendered, and are lower than would afford this complainant a reasonable and just return upon the value of its property used in performing the services in return for such rates, and that the effect of said acts, because thereof and also because said acts undertake to impose an immovable maximum, is to deprive this complainant of its property without due process of law and of the equal protection of the laws, and to take its property without just compensation, contrary to the said Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which is again in this regard expressly set up and claimed.

12. This complainant further shows that its existing rate fabric is properly adjusted in its relation between its interstate rates and its State rates in North Carolina and in other States, and that all its charges, with perhaps trifling and negligible exceptions;—exceptions which, if they exist, are entirely unimportant in the present connection—are just and reasonable in themselves, and do not and will not give to this complainant more than a just and reasonable return upon the value of its property used in the transportation service which it renders to the public; and that any reduction in its revenues will seriously embarrass and obstruct it in providing, and will deprive it of its power to properly provide, the facilities which the public commerce dependent upon it for transportation absolutely requires for the movement of traffic, both intra and interstate. This complainant is advised that no State has a right to require that its own commerce between points within the State shall be given a preferential service, or shall be carried at preferential and lower rates than other commerce. No State has a right to require such discrimination or partiality in favor of its own traffic. This complainant shows that the effect of the said rates proposed to be put into effect, pursuant to the acts of the General Assembly of North Carolina hereinbefore referred to, will be to destroy the proper adjustment of its intrastate rates in North Carolina to its interstate rates generally, and to its intrastate rates in other States, and to require that a preference shall be given by this

complainant, and an undue discrimination exercised by it, in favor of the intrastate traffic in North Carolina over the interstate traffic carried by this complainant, and over the intrastate traffic of this complainant in other States, and that to require such preference and such undue discrimination in regard to the intrastate traffic of the State of North Carolina would be to so regulate and burden interstate commerce as to violate the Commerce Clause of the Constitution of the United States, the benefit and protection of which this complainant respectfully sets up and claims.

13. That by section 3 of the above mentioned "Act in respect to Freight Rates" it is provided that whenever any person, firm or corporation intending to ship freight makes a written application to any railroad company for a car or cars to be loaded in car load lots with any kind of freight embraced in the tariffs of said Company, stating in such application the character of the freight, the number of cars wanted, the station, depot, siding, wharf or boat landing on the road or line of said railroad company whence the shipment is to be moved, and its final destination, the railroad company shall furnish said car or cars within four days from seven o'clock A. M. of the day following such application; which said application shall be delivered to the agent of the railroad company at the station at or nearest the point of shipment; and it is further provided that any railroad company failing to furnish the car or cars named in said written application shall be subject to a penalty of
31 five dollars per car per day, for each car not furnished, to be recovered by the person, firm or corporation making said application; but the Corporation Commission may excuse from the penalties imposed by this section independent lines not owned, operated, or controlled by any other line or system, where trackage is less than one hundred miles. The requirements of said statute are peremptory, and no exception is made in cases of inability of the carrier occasioned by wrecks or other accidents upon its road involving a detention of traffic, the breaking of bridges, accidental fires, washouts or other unavoidable consequences of heavy weather, and no exception in cases of a sudden congestion of traffic and actual inability to furnish cars by reason of their temporary and unavoidable detention in other States, or in other places within the same State, or in favor of the necessities of other classes of traffic, inter or intrastate. The complainant is advised that the said provision of the said act in respect to freight rates, is, therefore, a regulation of interstate commerce, and violates the commerce clause of the Constitution of the United States, the benefit and protection of which, in this regard, is here again expressly set up and claimed.

14. That by the said "Act in respect to Freight Rates" it is provided that any railroad company doing business in the State of North Carolina, or officer or agent thereof, who shall make charges for shipments of freight in violation of the provisions of said act, shall be deemed guilty of a misdemeanor, and such corporation shall, upon conviction, be fined not less than one hundred dollars, and such officer or agent shall be fined or imprisoned, or both, in the discretion of the court. And by the said "Act in respect to Pas-

senger rates" it is provided that any railroad company violating any provision of the act shall be liable to a penalty of five hundred dollars for each violation, payable to the person aggrieved by such violation, and recoverable in an action to be instituted in the name of said person in any court of North Carolina having competent jurisdiction thereof, and any agent, servant or employee of any railroad company violating said act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court. This complainant is advised that the effect of said act is, in addition to the punishment of the officer, servant, agent or employee for a misdemeanor, to impose this upon this complainant for each shipment of freight, at a greater rate than is allowed by the said act in respect thereto, a fine of one hundred dollars, and for each sale of a passenger ticket, at a rate greater than is allowed by the said act in respect
31½ to passengers, a fine of five hundred dollars. An effort is thus made to prevent by these enormous penalties, which are in their nature confiscatory of this complainant's property, any inquiry into the validity of these particular statutes, and to so burden any challenge thereof in the courts that this complainant and the others affected thereby must necessarily submit, rather than take the chances of the penalties imposed, and this complainant is advised that the effect of these penalties and of the legislation which imposes them is, because no other person or business in North Carolina is subjected to such penalties under similar circumstances, to deprive this complainant of the equal protection of the laws, and, moreover, is a denial to this complainant of due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, which this complainant respectfully sets up and claims.

15. That by said section 3 of "said act in respect to passenger rates" it is provided that mileage books of one thousand miles in each book shall be kept on sale at such railroad ticket offices in North Carolina as shall be named and designated by the Corporation Commission of North Carolina, and when any such mileage book is purchased it shall be good in the hands of any person or persons named therein on all railroads on which the fare is the same as, or less than, the fare on the road of the company selling such mileage book; and, when the mileage is detached from said book by any other railroad company than the one which sold it, the said mileage shall be redeemable on demand by the railroad company which sold it. This complainant is advised that the effect of said provision is to require this complainant to accept and to carry out, the contracts of other railroad companies as embraced in said mileage book tickets and to permit some other railroad company to collect money for the price of transportation which this complainant by said law will be required to furnish, and is, moreover, to constitute this complainant, without its consent, the agent of other railroad companies for the purpose of sale of tickets and the receipt and accounting for the price thereof. This complainant is further advised that while it may be the proper interpretation of said provision, that it may limit in point

of time the mileage tickets which it issues, there is no power given to this complainant to limit, in point of time, the mileage books issued by other carriers which, by the terms of said act, it is required to redeem without reference to the length of time the same might be outstanding. This complainant is advised, and here shows to
32 the court, that the said provisions of section 3 mentioned in this paragraph are unreasonable regulations, as applied to this complainant and its business, and deprives it of its property right of management of its own property and, by seeking to impose upon it unreasonable burdens, deprives it of the proper use of its property without due process of law and also deprives it of the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefits and protection of which this complainant respectfully sets up and claims.

16. This complainant further shows that there is no just reason for making a rule for some of the railroads different from that made for the Complainant, in respect to their freight rates, and in respect to demurrage charges, and that there is no reasonable basis for such difference; and there is likewise no just reason for the difference in rates in the said "Act in respect to Passenger Rates" made in favor of roads in said State whose mileage is sixty miles or under over other railroads, and in favor of railroads constructed within twelve months preceding the first day of January, 1907, or at that time in course of construction, and such railroads as may be constructed within two years from January 1st, 1907, over other railroads. Each of the carriers in said State of North Carolina is, under the Constitution of the United States, entitled to charge a reasonable compensation for the service rendered, and no difference in classification can be made arbitrarily by length of road merely for the purpose of allowing one carrier to charge more than another for the same or similar service. This complainant is, therefore, advised that the effect of said acts in making such difference in classification and in permitting one carrier to charge for the same service in North Carolina a greater sum than is permitted to another carrier in North Carolina is to deprive this complainant of the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, which this complainant, in this regard, here again respectfully sets up and claims.

17. The complainant further shows that the Corporation Commission of North Carolina is required by the said "Act in respect to Freight Rates" to prepare and publish, before the same go into effect, the tariff of rates, charges and tolls to be charged and collected by railroad companies in the State of North Carolina, as authorized by said act, and by the said "Act in respect to Passenger Rates" it is required to publish, before the same go into effect, the rates
33 fixed by the said act for the several railroad companies operating in the State of North Carolina, and the Corporation Commission of North Carolina is further required by the law of North Carolina, if this complainant, in its opinion, violates the said "Act in respect to Freight Rates," or the said "Act in respect to

Passenger Rates," and charges a rate in excess of the amount permitted by such acts respectively, to give notice in writing to this complainant of such violation, and, if such charge in excess of the rates fixed by said acts is continued after such notice, said commission is required to present the facts forthwith to the Attorney General, and the said Attorney General and the said Assistant Attorney General are required to take such proceedings thereon as they may deem expedient; and this complainant says that, unless prevented by the injunction of this Honorable Court, the said Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constituting the Corporation Commission of the State of North Carolina, will, for the purpose of putting the same into effect, make up and publish said tariff of freight rates as provided by said "Act in respect to Freight Rates," and will undertake to classify your complainant and the other carriers in North Carolina in accordance with, and will publish the passenger rates prescribed by, said Act in respect to Passenger rates," and will, in case this complainant exercises its constitutional right to make charges in excess of the rates fixed by said acts respectively, proceed against this complainant for a violation thereof, and the said Robert D. Gilmer, Attorney General, and the said Hayden Clement, Assistant Attorney General, will, in such case, proceed to impose the penalties prescribed by said act on this complainant therefor.

The complainant further shows that, unless this Court takes jurisdiction of and determines the question of the constitutionality and validity of said statutes and affords complainant relief in respect thereto in this cause, the number of actions for penalties to which it will be thus exposed and which will be thus instituted against it, will be enormous, and it will be very difficult, if not practically impossible, to show in defence of each of said actions and prosecutions, what the effect upon the Complainant's revenues would be of the proposed reductions in its freight and passenger rates or such effect in respect to each particular article of freight and each particular passenger; and in any event, it would be seriously and unjustly burdensome and expensive to the complainant to be subjected to the great multiplicity of suits and prosecutions for penalties to which it would be subjected if relief herein is not granted, and to be
34 obliged to produce in each and all of said suits and prosecutions the necessary evidence to show that said freight tariff and said passenger tariff are unreasonable and unjust and are confiscatory of your complainant's property; and the pendency of such suits, involving in the aggregate such enormous amounts of penalties would depreciate the value of complainant's property and the value of its stocks and bonds and would greatly impair its credit and consequently its ability to perform the public service required by the commerce tributary to its lines, and would inflict great and irremediable injury and damage, not only upon the complainant and upon the holders of its stocks and bonds, but also upon the shipping and travelling public. The complainant avers that in all the multitude of actions and prosecutions referred to the same question

would be involved, and that that question is involved, and can be tried and its merits fairly determined in this cause.

18. The subject matter of this suit now brought before this Honorable Court is a controversy between citizens of different States, and the amount involved herein, exclusive of interest and costs, exceeds the sum or value of $2,000, and this suit also involves questions arising under the Constitution of the United States, and rights asserted by the Complainant under said Constitution and protected thereby.

19. The complainant shows to the court that its purpose in this cause is, by an orderly proceeding in the courts, to obtain a judicial determination of its rights under the Constitution of the United States, and, if, as it is advised and believes, its just rights in the premises are imperilled, denied and encroached upon by the several acts of the General Assembly of North Carolina hereinbefore complained of as contrary to the Constitution of the United States, then to obtain a judicial decree establishing and protecting the rights of this complainant, and to that end it is essential, as alleged in this bill, that an injunction shall be issued; but this complainant does not desire in any way injuriously to affect any lawful right of the State or of the people of North Carolina, or of any other person, and hereby complainant offers and undertakes to do all in its power to maintain the *status quo* during the course of this judicial inquiry, and accordingly it consents, and it prays the court, that there may be and shall be adopted herein a proceeding analogous to that provided by section 7 of the Corporation Commission Act of North Carolina, namely, the execution of a bond by the complainant
35 conditioned to pay into the registry of this court, from time to time, when and as the court may so order, such sum and sums of money as shall be equal to the difference between the aggregate freight and passenger rates charged and received by it, and those fixed in or under the said acts of Assembly, and that, as an incident thereto, the complainant shall give to any person purchasing a ticket for travel on its lines in the State of North Carolina a transferable coupon, or other written evidence, representing the sum to which such person, or his transferee, will be entitled upon a final decision upholding the constitutionality of such laws, such coupons, or the amount covered by such other written evidence, in that event to be payable out of the cash deposit in the registry of this court; and that this complainant, from time to time, shall report to the court at intervals to be fixed by the order of the court herein, statements showing the amount of such passenger fares and of the freights by it charged and collected, and of the names of the shippers of such freights, and that from time to time the complainant shall give such further bond or bonds as the court may require to secure the proper payment into court of all amounts which finally it shall be adjudged that it should repay, or reimburse, under the final decision of this court, or upon final review thereof; and that on a final determination herein that this complainant is entitled to the amounts covered by said bond or bonds, that the said bonds be released and canceled by the court, and, if any amounts shall have been paid into the registry

of the court pursuant thereto that, upon such determination in favor of the complainant, the sum or sums so paid into the registry shall be repaid to the complainant without further order of the court herein.

20. Complainant avers that it will be irremediably injured unless an injunction be granted as hereinafter prayed, and relief be given to it in this suit.

In consideration whereof, and forasmuch as your complainant is remediless in the premises under the rules of the common law and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, and to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were again here repeated, and they were thereunto specially interrogated, but not under oath, answer under oath being expressly waived, the complainant prays that the
36 said defendants be required so to answer, and that an injunction may be issued out of this court enjoining and prohibiting the defendants Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually, and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, from preparing and publishing the tariff of rates, charges and tolls mentioned in said act in respect to freight rates, and from classifying the railroads operating in North Carolina in accordance with, and from publishing the rates fixed by said act in respect to passenger rates, and from taking any steps, under or in pursuance of the said act of the General Assembly of North Carolina entitled "An Act to prevent unjust discrimination in Freight Rates and to fix maximum charges therefor," ratified March 9, 1907, or under said act of the General Assembly of North Carolina entitled "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," ratified March 2, 1907, and from taking any step in pursuance of any of the laws of the State of North Carolina, either directly or through the said defendant Robert D. Gilmer, Attorney General, or Hayden Clement, Assistant Attorney General, or by or through any other attorney at law, or otherwise, to enforce either of said Acts or the penalties therein prescribed, or any other penalties against the complainant, or against any of its officers, agents, or employees, for failure to put into effect or to observe on any of the lines of complainant in North Carolina the said freight rates or the said passenger rates required by either of said Acts, and enjoining the defendants Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, each and every of them, and their and each of their successors in office, from taking any step under the laws of North Carolina, by themselves or through any other attorney at law, or otherwise, for the purpose of enforcing either of said Acts or any of the penalties thereby prescribed, or any other penalties against the complainant or against any of its officers, agents or employees, for failure to put into effect, or to comply with either of the

said Acts of the General Assembly of North Carolina or any of the provisions thereof, and enjoining each and all of said defendants, their servants or agents, from instituting or bringing, or causing to be instituted or brought, as aforesaid, any suit, either at law or in equity, against your complainant, or against any officer, agent or employee of your complainant, compelling your complainant, or any of its officers, agents or employees to put into effect, or observe,
37 either of said Acts, or any provision thereof, and enjoining and prohibiting the said Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, and each of them, and their successors in office, and each and every other attorney at law that may be employed or appointed by the said Corporation Commission of North Carolina, or by the said Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, Railroad Commissioners, or either of them, or by any other officer of the State of North Carolina, from bringing or prosecuting any action or proceeding, civilly or criminally, against your complainant, or any of its officers, agents or employees, for penalties or fines or damages, or for any cause of action whatsoever, for failure to put into effect on any of the said lines of railway of the complainant in North Carolina any of said tariffs, passenger or freight, or for failure to observe said Acts or either of them, or any provision of either, and from instituting or bringing, or causing to be instituted or brought, any suit at law or in equity, for penalties or otherwise, against the complainant or any officer or agent of the complainant, for charging more for freight or passenger transportation than is provided by said Acts, or so as in any way to prevent or hinder the complainant from increasing its freight and passenger charges, to the extent that such increase may be fair, reasonable and just, and enjoining and prohibiting all other individuals, persons or corporations from instituting or prosecuting any suit or suits against the complainant, or against any officer, agent or employee of the complainant, for the recovery of any damages or overcharges, or for the recovery or imposition of any penalty or penalties, under or by virtue of said Acts or either of them, or under or by virtue of any other law of North Carolina, because of or growing out of the failure of the complainant or any of its officers, agents or employees, to put into effect, or observe, any of the provisions of said Acts, or either of them; and that the said tariffs, freight and passenger, prescribed by said Acts, and each and every of the provisions of said Acts, and of each of them, be declared to be unreasonable, unfair and unjust to the complainant, and unconstitutional, null and void.

That in the meantime, and until a decision can be had upon your complainant's motion for the injunction herein prayed, a restraining order may be granted, restraining the acts sought herein to be enjoined, your complainant hereby averring that there is danger of irreparable injury from delay if action should not be taken until such motion for an injunction can be tried upon its merits.

That a writ of injunction be issued, etc., commanding, etc., enjoining the defendants as above prayed.

38 That on a final hearing said injunction as herein prayed may be made perpetual; that the said Act ratified March 9, 1907, and the said Act ratified March 2, 1907, providing for said freight and passenger tariffs, respectively, may each of them be declared null and void by a decree of this court, so far as the same relate to any of your complainant's said lines of railroad in North Carolina, or to any of its business, and that your complainant may have such other and further relief as in justice it may be entitled to, and as to equity is meet.

That this complainant may have leave to make, by supplemental process, as new parties defendant, as occasion may require, any person or corporation who may appear asserting against this complainant, or against any of its officers, agents or employés, any alleged right or remedy under either of said acts, or otherwise, because of the failure of the complainant, or any of its officers, agents or employés, to put into effect, or to observe, any rate mentioned in either of said acts or any other provision of said acts, or either of them.

May it please your Honors to grant unto your complainant the temporary restraining order aforesaid, the writ of injunction aforesaid, and the writ of subpœna addressed to said defendants Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, individually, and as constituting the Corporation Commission of North Carolina, and Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, commanding said defendants, under a penalty therein named, to appear in this court, on some certain day, to be thereby fixed, to answer the premises and abide by and perform such decree as may be passed herein, but said answer as above stated not to be made on oath, answer under oath being expressly waived.

This is the first application by your complainant for a restraining order or injunction in this case.

SOUTHERN RAILWAY COMPANY,
Complainant,
By J. M. CULP, *Vice President.*

CLAUDIAN B. NORTHROP,
W. B. RODMAN,
Solicitors for Complainant.
FRANCIS LYNDE STETSON,
ALEX. P. HUMPHREY,
WALKER D. HINES,
ALFRED P. THOM,
Of Counsel.

39 UNITED STATES OF AMERICA, *District of Columbia, To wit:*

Personally appeared before me, Pearce Horne, a Notary Public, duly commissioned, qualified and acting as such in and for the District of Columbia, J. M. Culp, who, upon being first duly sworn deposes and says:

That he is Vice President of the Southern Railway Company, the complainant in the foregoing bill of complaint; that he has personal supervision of the traffic of said Company; that he has read the foregoing bill and knows the contents thereof; that the facts therein stated, as of complainant's own knowledge, are true; and that the facts therein stated upon complainant's information and belief, he believes to be true.

J. M. CULP.

Sworn and subscribed to before me this 7th day of May in the year 1907.

My commission as Notary Public expires on the 17th day of January, 1911.

In witness whereof I have hereunto signed my name and affixed my notarial seal at the city of Washington in the District of Columbia, this 7th day of May in the year 1907.

[SEAL.] PEARCE HORNE,
Notary Public.

40 EXHIBIT No. 1.

AN ACT

AUTHORIZING THE PURCHASERS OF THE RICHMOND AND DANVILLE RAILROAD, THEIR ASSIGNS AND SUCCESSORS, TO BECOME AND BE A CORPORATION, TO ADOPT A NAME THEREFOR, AND TO POSSESS AND EXERCISE GENERAL POWERS; AND AUTHORIZING THE LEASING TO OR BY, AND THE CONSOLIDATION THEREWITH OF, OTHER CORPORATIONS.

[Approved February 20, 1894.]

Whereas, a certain suit in equity is now pending in the Circuit Court of the United States of America for the Eastern District of Virginia, wherein the Central Trust Company of New York is complainant, and the Richmond and Danville Railroad Company, a corporation created by and existing under the Laws of the State of Virginia, is defendant, in which suit it is sought to foreclose the consolidated mortgage, dated the twenty-second day of October, in the year one thousand eight hundred and eighty-six, and upon or about that day duly executed, acknowledged and delivered by said railroad corporation to said Central Trust Company of New York, and subsequently supplemented and confirmed by said railroad corporation by instruments dated November first, eighteen hundred and eighty-six, and April thirtieth, eighteen hundred and eighty-eight, respectively, in which suit also it is proposed to sell the whole of the mortgaged property and premises, being the rights, property, privileges and franchises of the said the Richmond and Danville Railroad Company.

And, whereas, it is deemed desirable and for the interest of this Commonwealth that the said railroad property shall be sold and

reorganized in such manner and under such conditions as to secure the largest and best possible facilities and advantages of transportation and communication for the people of this State; now, therefore:

1. *Be it enacted by the General Assembly of Virginia,* that the purchaser or purchasers of the said mortgaged premises of the said the Richmond and Danville Railroad Company at the foreclosure sale thereof in the course of the said suit in equity, and such person or persons as he or they may associate with himself or themselves, shall forthwith be, and they hereby are, constituted a body politic and corporate by the name which they may select, as set forth in the conveyance of said mortgaged premises, or in any writing signed by him or them and recorded in the court in which the said conveyance shall be recorded, and such new corporation shall have, possess and be invested with all the estate, right, title and interest in and to such railroad and other property, with their appurtenances, and all the franchises, rights and privileges had and pos-
41 sessed by the said Richmond and Danville Railroad Company to the same extent as a purchaser under sections twelve hundred and thirty-three and twelve hundred and thirty-four of the Code of Virginia, and shall perform all the duties prescribed by said sections of said Code; provided, however, that said new corporation shall not be limited as to the amount or classification of its stock or bonds, except that the total amount of stock issued shall not exceed three hundred and fifty million dollars, and shall have no immunity from any lawful State, county or municipal taxation by reason of its former charter or any law heretofore exempting it from taxation.

2. Such purchaser or purchasers may associate with him or them any number of persons in the organization of the new corporation, which may create and issue its stock and its bonds secured by mortgage or otherwise, according to any plan adopted by such purchaser or purchasers, and filed as hereinafter provided.

3. It shall be the duty of such new corporation within six months after the conveyance to it of said mortgaged premises to execute a certificate in writing under its common seal attested by the signature of its President or Vice-President, referring to the sale and conveyance by which it shall have acquired title to such premises and the plan of organization adopted by the purchasers, the amount and classes or kinds of capital stock and mortgage bonds or other obligations authorized to be issued, and also specifying the name of such new corporation and of its President, and the number and names of its Directors, which certificate shall be filed in the office of the Secretary of the Commonwealth of Virginia, and a certified copy thereof shall be conclusive evidence of the existence of such new corporation.

4. In addition to its other powers, such new corporation shall have, and from time to time as occasion arises may exercise, the following powers, or any of them, namely:

(*a*) With the approval of a majority of its stockholders, given at a meeting, it may, from time to time, lease, use, operate, consolidate with, or purchase or otherwise acquire, or be leased, used, operated

by, or consolidated with, any railroad or transportation company now or hereafter incorporated by the laws of the United States, or any of the States thereof, or any one or more of such railroad or transportation companies, or any other railroad or transportation company or companies which now are or hereafter may be leased, or used, or operated by, or consolidated with any one or more of such railroad or transportation companies; and, from time to time, it may consolidate its capital stock, property and franchises, by change of name or otherwise, with the capital stock, property and franchises of any other railroad or transportation company, power being hereby granted to any railroad or transportation company or companies incorporated by or under any act or acts of the General Assembly of the State of Virginia, with the approval of a majority in amount of its or their shareholders respectively given at any meeting, to make and carry out such contracts of consolidation, or lease, sale or other method of acquisition; *provided* that, in all con-
42 solidations, a copy of the agreement therefor shall be filed in the office of the Secretary of the Commonwealth of Virginia, and that any corporation with which said new corporation may consolidate, or which it may lease, shall be or remain subject to the jurisdiction of the courts of this State, and all lines of railroad operated by it in the State of Virginia shall be subject to the general laws of the State; and *provided, further,* that any stockholder who dissents from any such consolidation may within sixty days thereafter apply by petition to the Circuit Court of the City of Richmond to determine the value of his stock, and shall be entitled to receive from the new corporation the value as thus determined of such stock upon transfer thereof to the new corporation.

(*b*) It may from time to time purchase, own and hold bonds or other evidences of debt, and shares of the capital stock of any railroad company or companies formed under the laws of this or any other State, and from time to time may guarantee or assume the bonds, evidences of indebtedness or capital stock of any such railroad company.

(*c*) It may from time to time acquire or guarantee the stocks and bonds, or either, of any inland, coast or ocean transportation company or companies, operating to or from any point or points on its lines; and it may develop or aid in the development of its business, by acquiring or guaranteeing the stocks and bonds, or either, of hotel, lighterage, wharf, elevating and other such enterprises convenient in connection therewith or as part thereof.

5. Said new corporation may issue its capital stock of one or more classes or kinds, and in one or more series or grades, with such preferences, conditions and voting power as shall be provided in said plan of organization, and, from time to time, it may increase or decrease the amount of any class or kind or grade of such stock as shall be provided in said plan of reorganization, or with the approval of a majority in amount of the stockholders, given at a meeting of stockholders called for that purpose, unless and except as otherwise expressly provided in certificates representing stock previously issued. The shares of each class of stock shall be of such

par amount, and shall entitle the holders to such vote, respectively, as shall be determined in the said plan of reorganization, or by the stockholders in like manner.

6. Such new corporation may borrow money and issue bonds or other evidence of indebtedness therefor, and may secure the same, from time to time, by mortgage or deed of trust upon any or all of its property and franchises, and such new corporation, from time to time, may issue and sell its bonds and its capital stock at such prices and on such terms as shall be specified in said plan of organization, or as a majority in amount of the stockholders shall approve at any meeting, and may receive in payment therefor property, securities or shares in any corporation mentioned in this act, and any stock so issued shall be deemed fully paid and free from any liability.

43 7. The business, property and concerns of said corporation shall be managed by a Board of Directors consisting of not less than five members, and one of their number shall be chosen as President. The stockholders may adopt by-laws for the government of the stock, property and concerns of the corporation, and for the regulation of its directors, officers and agents, and in and by such by-laws the stockholders may prescribe how such by-laws may be amended or repealed; provided, however, that until such by-laws shall be adopted by the stockholders the corporation shall be governed by by-laws adopted in accordance with the plan of organization.

8. The principal office of the Company shall be in the City of Richmond, in this State, at which all meetings of the stockholders shall be held; and all other offices and workshops of said Company shall be located in the State of Virginia, as far as the same may be practicable.

9. It shall be lawful for the Circuit Court of the City of Richmond, upon the petition of the President and Board of Directors, at any time to order a change in the name of the Company; but any such change of name shall be without prejudice to the rights of any creditor, or to the exercise of any of the powers and privileges granted by this act.

10. There shall be paid to the Clerk of the county or corporation in which any mortgage authorized by this act may be presented for recordation, the existing rate of taxation for such recordation upon the assessed value of the road-beds, depots, station buildings and lots, and machine shops, fixtures and rolling stock, and any real estate not included in said enumeration, in the State of Virginia, conveyed in such mortgage; and upon presentation to the Clerk of the county or corporation where it is proposed to record said mortgage of a certificate of the Auditor of the State of the amount of the assessed values of the said property within the State of Virginia, and upon the payment of the tax thereon to the said Clerk, the said mortgage shall be recorded without other charge than the clerical fees provided in such cases. Certified copies of such mortgage may be recorded in any county of Virginia in which property covered by such mortgage may be located upon payment of clerical fees.

11. All taxes and debts due or to become due the State of Virginia

by the corporation shall be paid in lawful money of the United States, and not in coupons.

12. This act shall be in force from its passage.

A true copy.

Teste:

____ ____,
Clerk of the House of Delegates and Keeper of the Rolls of Virginia.

Date, ——, —.

44 SOUTHERN RAILWAY COMPANY.

Certificate.

STATE OF VIRGINIA, *City of Richmond, ss:*

Southern Railway Company, a corporation organized and existing under and pursuant to the provisions of an Act of Assembly of the State of Virginia, approved February 20, 1894 (of which act a copy, marked "Schedule D," is hereunto annexed and made a part of this certificate), entitled—

"An Act authorizing the purchasers of the Richmond and Dan-"ville Railroad, their assigns and successors, to become and be a "corporation, to adopt a name therefor, and to possess and exercise "general powers; and authorizing the leasing to or by, and the con-"solidation therewith of, other corporations,"

in conformity to the requirements of Section 3 of the said act, does hereby certify as follows, viz:

First. The said Southern Railway Company, upon June 18, 1894, did acquire title to the rights, property, privileges and franchises of the Richmond and Danville Railroad Company embraced in and covered by its consolidated mortgage to the Central Trust Company of New York, dated October 22, 1886, under and by means of the following sale and conveyance, viz:

(1) *The sale of the said mortgaged premises* was held in the City of Richmond, on the 15th day of June, 1894, under a decree of foreclosure and sale entered on the 13th day of April, 1894, in a certain suit in equity pending in the Circuit Court of the United States of America for the Eastern District of Virginia, wherein the Central Trust Company and others were complainants and the Richmond and Danville Railroad Company was defendant, in which suit it was sought to foreclose the said consolidated mortgage, and also to sell the whole of the mortgaged property and premises, being the rights, property, privileges and franchises of said the Richmond and Danville Railroad Company, at which sale the mortgaged premises were bid in by and struck off to Charles H. Coster and Anthony J. Thomas, a Purchasing Committee, as purchasers thereof, with the intent and for the purpose of vesting the same in the said Southern Railway Company thereafter to be organized by the said purchasers and their associates, pursuant to the laws of the State of Virginia.

(2) *The conveyance of the said mortgaged premises* was made pursuant to the order of the Circuit Courts of the United States of America, by the Special Masters in said suit, Matthew F. Pleasants, Thomas S. Atkins and Charles Price, upon the 18th day of June, 1894, to the said Charles H. Coster and Anthony J. Thomas, as Purchasing Committee for the benefit of the said Southern Railway Company, such conveyance having been duly recorded on the
45 said 18th day of June, 1894, in the Chancery Court of the City of Richmond, in the State of Virginia.

Second. *The plan of organization adopted by the purchasers* is that of which a copy is hereunto annexed, marked "Schedule B" and made part of this certificate.

Third. *The amount and classes or kinds of capital stock* already authorized to be issued by the new corporation (subject to increase up to but not exceeding the limit prescribed by said act) were and are:

One million two hundred thousand shares of common stock, and six hundred thousand shares of preferred stock, each and every of such shares being of the par value of one hundred dollars each, and the aggregate par value of such shares being one hundred and eighty million dollars.

The preferences, conditions and voting power of such capital stock are as set forth in the said plan of organization hereunto annexed, marked "Schedule B."

Fourth. *The amount and classes or kinds of mortgage bonds or other obligations heretofore* authorized to be issued by said corporation are bonds secured by mortgage payable as therein specified, and, except as and when registered as therein provided, being negotiable instruments, passing by delivery, free from any and all defences against the holder thereof, such bonds having been authorized to the amount of one hundred and twenty-four million five hundred thousand dollars, including what are known as its *"East Tennessee Reorganization Mortgage Bonds,"* for the aggregate amount of $4,500,000, and its *"First Consolidated Mortgage Gold Bonds,"* for the aggregate amount of $120,000,000, of which last-mentioned bonds a large part are not now to be issued, but are reserved for various purposes mentioned in the mortgage securing said bonds, dated October 2, 1894, and duly recorded November 9, 1894, in the office of the Clerk of the Chancery Court of the City of Richmond, in the State of Virginia, and also in other offices; and among other purposes for the redemption and payment in due course of the bonds of the Richmond and Danville Railroad Company, secured by its two mortgages to Central Trust Company of New York, as Trustee, dated respectively October 5, 1874, and February 1, 1882, such last-mentioned mortgage having been amended by agreement dated July 24, 1894, between the said Central Trust Company and the said Southern Railway Company, a part of the mortgaged premises first above mentioned having been sold and purchased subject thereto, and such bonds have been and are assumed by the Southern Railway Company; and also for the payment and redemption in due course of the said *"East Tennessee Reorganization Mortgage Bonds,"* and also

for the redemption and payment on July 1, 1909, of such of the first mortgage bonds of the Charlotte, Columbia and Augusta Railroad Company as shall have been extended in accordance with the provisions of an agreement made July 5, 1894, between the Southern Railway Company and the Maryland Trust Company, the holders of all such extended bonds then outstanding being entitled to exchange the same at par for like amount of the said First Con-
46 solidated Mortgage Bonds, interest to be adjusted properly at the time of every such exchange.

"Schedule A," hereunto annexed, is a list of the properties now embraced in the Southern Railway System, and is also a statement of bonds and obligations issued or assumed by or chargeable upon property purchased by Southern Railway Company under its said charter, "Schedule D," and showing the letter date of issue, number of bonds, amount of issue, rate of interest, and when and where payable; the only bonds issued directly by Southern Railway Company being those issued under the two mortgages first above mentioned, dated October 2, 1894.

Fifth. The name of the new corporation is "Southern Railway Company," and the name of its President is Samuel Spencer.

Sixth. The Directors of the new corporation are nine in number, and their names are:

Aubin L. Boulware, Richmond, Va.
Charles H. Coster, New York, N. Y.
Harris C. Fahnestock, New York, N. Y.
Thomas F. Ryan, do.
Samuel Spencer, do.
Anthony J. Thomas, do.
Samuel Thomas, do.
Skipwith Wilmer, Baltimore.
*J. Hood Wright, New York.

In witness whereof, the said Southern Railway Company has executed this certificate under and by its common seal, attested by the signature of its President, this fourth day of December, 1894.

SAMUEL SPENCER,
President of the Southern Railway Company.

[Seal of Southern Railway Company.]

Attest:
W. A. C. EWEN, *Secretary.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, George H. Corey, a Commissioner of Deeds for the State of New York, thereto duly appointed by the Governor of the State of Virginia, and a Notary Public for the said City and County of New York, thereto duly appointed by the Governor of the State of New York, do hereby certify that Samuel Spencer, whose name is signed to the foregoing and hereto annexed certificate bearing date the fourth day of December, 1894, as President of the Southern Railway

*A vacancy exists because of Mr. Wright's death, November 12, 1894.

Company, with whom I am personally acquainted, and who is personally known to me to be the President of the Southern Railway Company, the corporation described in and which executed the said certificate, personally appeared before me at my office in my said County and corporation, for himself and on behalf of the Southern Railway Company, and being informed of the contents of the
47 said certificate, he did on this day acknowledge the due execution of the foregoing certificate on the day the same bears date; and further acknowledged that he voluntarily executed, signed and sealed the said certificate as his free act and deed, and as the free act and deed of the said Southern Railway Company, for the purposes and uses therein mentioned.

And the said Samuel Spencer, being by me first duly sworn did depose and say: That he resides in the City of New York, in the State of New York; that he is the President of the Southern Railway Company; that he knows the corporate seal of the said Company; that the seal affixed to the foregoing instrument is the corporate seal of the said Company, and was thereto affixed by authority of the Board of Directors of the said Company, and that he signed his name thereto by like authority as President of said Company.

In witness whereof, I have hereunto set my hand and seals of office as Commissioner of Deeds for the State of Virginia and as Notary Public for the City and County of New York, in the State of New York, at my office, this fourth day of December, 1894.

[Seal of George H. Corey, Commissioner for Virginia.]

GEO. H. COREY,
Commissioner for the State of Virginia in New York.

[Seal of George H. Corey, Notary Public, New York.]

GEO. H. COREY,
Notary Public for the City and County of New York in the State of New York.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Henry D. Purroy, Clerk of the City and County of New York, and also Clerk of the Supreme Court in said City and County, the same being a court of record do hereby certify that George H. Corey, whose name is subscribed to the certificate of acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment a Notary Public in and for the City and County of New York, dwelling in the said City, commissioned and sworn, and duly authorized to take the same and to administer oaths; and, further, that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to the said certificate of acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 12th day of December, 1894.

[Seal of the Supreme Court, City and County of New York.]

HENRY D. PURROY, *Clerk.*

48 "SCHEDULE A."

(*a*) LINES OF WHICH THE OWNERSHIP HAS BEEN ABSOLUTELY MERGED INTO THE SOUTHERN RAILWAY COMPANY (OR THE COMPANIES OF LIKE NAME IN KENTUCKY AND MISSISSIPPI) BY PURCHASE AT FORECLOSURE OF BY OTHER CONVEYANCE:

Richmond, York River & Chesapeake	about	39.	miles.
Richmond & Danville	"	145.53	"
Piedmont	"	48.	"
Washington, Ohio & Western	"	50.12	"
Western North Carolina	"	307.	"
Statesville & Western	"	20.36	"
Northwestern North Carolina	"	100.15	"
Clarksville & North Carolina	"	7.03	"
Oxford & Clarksville	"	49.32	"
Oxford & Henderson	"	12.94	"
Atlantic, Tennessee & Ohio	"	.44	"
Charlotte, Columbia & Augusta	"	190.53	"
Columbia & Greenville	"	164.98	"
Georgia Pacific	"	552.	"
East Tennessee, Virginia & Georgia	"	1,254.40	"
Louisville Southern	"	123.88	"
			3,109.24 miles.

(*b*) OPERATED LINES OF WHICH ALL OR NEARLY ALL THE STOCK IS OR IS EXPECTED TO BE OWNED BY SOUTHERN RAILWAY COMPANY:

Virginia Midland* and branches (leased)	about	400.70	miles.
High Point, Randleman, Asheboro & Southern (all bonds also owned)*	"	27.51	"
North Carolina Midland (all bonds also owned)*	"	26.11	"
Elberton Air Line (all bonds also owned)*	"	50.36	"
Roswell	"	9.11	"
Yadkin*	"	41.17	"
State University (no bonds issued)	"	10.20	"
			565.46 miles.

*MEMO.—It is intended, later on, to bring about a conveyance of these lines to he Southern Railway Company.

49 (*c*) LEASED LINES:

North Carolina Railroad.....	about 223.20 miles.	
Atlanta & Charlotte.....	" 268.54 "	
		491.74 miles.

(*d*) LINES OPERATED UNDER VARIOUS ARRANGEMENTS:

Lawrenceville (all bonds and majority of stock owned, but line is of no value and has been discontinued)..	9.61 miles.	
Richmond & Mecklenburg (all second mortgage bonds and most of stock owned)	31.45 "	
Asheville & Spartanburg, and Spartanburg, Union & Columbia (operated temporarily for account of first mortgage bondholders).....	133.90 "	
		174.96 "
(*e*) KNOXVILLE & OHIO RAILROAD (nearly all the stock owned)		66.00 "
(*f*) BALTIMORE, CHESAPEAKE & RICHMOND STEAMBOAT LINE (all the stock and all certificates of debt owned).....		200.00 "
Total mileage.....		about 4,607.40 miles.

(*g*) LINES OPERATED INDEPENDENTLY IN WHICH SOUTHERN RAILWAY COMPANY IS INTERESTED AS BONDHOLDER:

Danville & Western.....	about 70. miles.	
Chester and Lenoir, north end..	" 33. "	
Blue Ridge (believed to be of no value).....	" 34.02 "	
Laurens (believed to be of no value).....	" 29.90 "	
Milton & Sutherlin (believed to be of no value).....	" 6.50 "	
Hartwell	" 10.10 "	
		183.52 miles.
Grand total.....		about 4,790.92 miles.

"SCHEDULE A"—*Continued.*

SOUTHERN RAILWAY COMPANY.

Outstanding Mortgage and Obligations.

Principal and Interest payable, except as otherwise specified, in the City of New York.

Name of railroad company.	Description of bond or obligation.	Due.	Int.	Amount.
	A.			
	On properties merged into Southern Railway Company.			
Richmond & Danville	Consolidated gold 6 %	Jan., 1915	J & J.	$5,997,000.00
do.	Debenture 5s (formerly 6s), earliest coupon April, 1896	April, 1927	A. & O.	3,368,000.00
do.	Equipment S. F. gold 5 % (1)	Sept., 1909	M. & S.	1,194,000.00
do.	Equipment Notes	Various		507,835.00
Richmond, York River & Chesapeake	First Mortgage 5 %	Jan., 1910	J. & J.	400,000.00
do. do.	Second Mortgage 4½ %	Nov., 1910	M. & N.	500,000.00
Washington, Ohio & Western	First Mortgage 4 %	Feb., 1924	F. & A.	1,025,000.00
Atlantic, Tennessee & Ohio	First Mortgage 6 %	April, 1913	A. & O.	150,000.00
Western North Carolina	First Mortgage gold 6 %	July, 1914	J. & J.	2,531,000.00
Charlotte, Columbia & Augusta	First Mortgage gold 7 %, due January 1, 1895, extended at 5 % to July, 1909	July, 1909	J. & J.	2,000,000.00
do. do.	Second Mortgage 7 %, earliest coupon October, 1895	Oct., 1910	A. & O.	500,000.00
Columbia & Greenville	First Mortgage gold 5 % to January, 1898, 6 % thereafter	Jan., 1916	J. & J.	2,000,000.00
Georgia Pacific	First Mortgage gold 5 % to January, 1898, 6 % thereafter	Jan., 1922	J. & J.	5,660,000.00
do.	Equipment S. F. gold	Various	F. & A.	787,000.00
do.	Equipment Notes	Various		359,005.54
East Tennessee, Virginia & Georgia	Divisional Mortgage 7 %	July, 1900	J. & J.	3,123,000.00
do. do.	Divisional Mortgage gold 5 %	July, 1930	J. & J.	3,106,000.00
do. do.	Consolidated gold 5 %	Nov., 1956	M. & N.	12,770,000.00
do. do.	Equipment Notes (including Louisville Southern)	Various		415,831.59
Alabama Central	First Mortgage gold 6 %	July, 1918	J. & J.	1,000,000.00
Southern Railway	East Tennessee Reorganization dated October 2, 1894, for old Equipment and Improvement bonds, gold, 4 % to March, 1898, inclusive, 5 % thereafter	Mar., 1938	M. & S.	4,500,000.00

(1) Also payable in London, England.

THIS PAGE BOUND

51 Name of railroad company.	Name of bond.	Due.	Int.	Amount.
	B.			
	On properties practically owned by (*) or leased to (†) Southern Railway Company.			
*† Virginia Midland	Serials [1]	Various...	M. & S.	$7,635,000.00
†† do.	General Mortgage 5 %	May, 1936	M. & N.	4,859,000.00
*† Charlottesville & Rapidan	First Mortgage 6 % [2]	July, 1913	J. & J.	421,700.00
*† Franklin & Pittsylvania	First Mortgage 6 % [3]	July, 1913	J. & J.	79,000.00
† Atlanta & Charlotte Air Line	Preferred Mortgage 7 %	April, 1897	A. & O.	500,000.00
† do. do.	First Mortgage 7 %	Jan., 1907	J. & J.	4,250,000.00
† do. do.	Income 6 %	April, 1900	A. & O.	750,000.00
† do. do.	Stock 5–6 %	.....	M. & S.	1,700,000.00
† North Carolina	Rental Equivalent to 6½ % on stock	Sept., 1901	J. & J.	4,000,000.00
* Knoxville & Ohio	First Mortgage gold 6 %	July 1, 1925	J. & J.	2,000,000.00
	C.			
	On all the property of the Southern Railway Company, including leaseholds, stocks and bonds.			
Southern Railway	First Consolidated Mortgage gold 5 % dated October 2, 1894—total issue $120,000,000, of which:	July, 1994	J. & J.	
	Reserved to take up foregoing bonds, stocks, &c...	$78,088,372.13		
	do. for new construction and other purposes.	20,000,000.00		
	To be issued now	21,911,627.87	.....	21,911,627.87
	Total existing debt Southern Railway Company		.....	$100,000,000.00

(1) Interest payable in Baltimore, Md.
(2) Interest payable in Philadelphia, Pa.
(3) Interest payable in Baltimore, Md.

JAMES H. WOOD.

52 "SCHEDULE B."

Southern Railway Company.

The purchasers of the railroad and other property of the Richmond and Danville Railroad Company, at the foreclosure sale thereof held in the City of Richmond on the 15th day of June, 1894—viz., Charles H. Coster and Anthony J. Thomas and their associates—constituting Southern Railway Company, a corporation organized and existing under the laws of the State of Virginia, and particularly an Act of Assembly of said State entitled—

"An Act authorizing the purchasers of the Richmond and Dan-
"ville Railroad, their assigns and successors, to become and be a
"corporation, to adopt a name therefor, and to possess and exercise
"general powers, and authorizing the leasing to or by, and the con-
"solidation therewith of, other corporations," approved February 20, 1894,

have adopted and adopt the following as

The Plan of Organization.

First. The said purchasers and the Southern Railway Company have accepted and do accept the before-mentioned Act of Assembly of the State of Virginia, and, anything herein contained or herefrom omitted to the contrary notwithstanding, they do reserve and retain the right from time to time and at all times to exercise and enjoy any and every right, power, privilege and franchise conferred in and by said Act of Assembly of the Commonwealth of Virginia approved February 20, 1894, or by any other act or law of which the Southern Railway Company may lawfully claim the benefit.

Second. The said purchasers and the Southern Railway Company have fixed the capital stock of the corporation at $180,000,000, divided into one million eight hundred thousand shares of the par value of $100 each, of which six hundred thousand shares are preferred stock and the remainder are common stock, reserving the right to increase such capital stock up to, but not exceeding, the limit authorized by the said Act of Assembly of the Commonwealth of Virginia approved February 20, 1894, and to increase or decrease the amount of any class or kind or grade of its capital stock, and also reserving any and all right to redeem and purchase at par any and all preferred stock, or any kind, class or grade thereof.

The Preferred Stock is entitled to the following preferences, and to no other—viz:

In each and every fiscal year after the first day of July, 1895, to receive non-cumulative dividends at and up to the rate of five per cent. per annum in preference and priority to the payment of any dividend on the Common Stock in such fiscal year, but only from the net profits of the Company as such shall be fixed and de-
53 termined by the Board of Directors, and only when and as such Board shall declare dividends therefrom; but, notwith-

standing the preference hereby declared, if, after providing for the payment of dividends for any fiscal year on the Preferred Stock outstanding in such year, there shall remain a surplus of net profits of such year, the Board of Directors may declare and pay dividends upon any other stock of the Company for such year out of such surplus net profits.

Such Preferred Stock is authorized to the amount of Sixty Million Dollars; and, without the consent of the holders of a majority of such Preferred Stock then outstanding, the Company can neither increase such authorized amount thereof nor put upon its property any mortgage to secure bonds for more than the aggregate principal sum of one hundred and twenty million dollars, in addition to prior liens thereon, assumed, extended or renewed, or any substitutions therefor, against which a like amount of bonds shall be reserved out of such amount of $120,000,000.

The conditions and voting power in respect of and belonging to all such stock are as follows:

With the exception of one thousand shares of common stock, heretofore issued or reserved to qualify Directors, or for other purposes, all of the stock of the Company—viz., 1,199,000 shares of common stock and 500,000 shares of preferred stock—have been duly issued and have been duly delivered to J. Pierpont Morgan, Charles Lanier and George F. Baker and their successors, as Voting Trustees, under an agreement dated October 15, 1894, with the exclusive right and privilege, in the said Voting Trustees during the continuance of their trust, as stated in said agreement, to vote upon and in respect of all such stock so issued to them, and also to collect and receive any dividends declared in respect of such stock, and to distribute any such dividends among the holders of their stock-trust certificates, which holders in due course will be entitled to receive in exchange therefor certificates for corresponding amounts and kinds of the capital stock of this Company then entitling them to one vote for each share thereof, and in the meantime to receive payments equal to the dividends, if any, collected by the Voting Trustees upon such number of such shares standing in the name of the Voting Trustees, who, until after the actual delivery of such stock certificates, shall possess and shall be entitled to exercise all rights of every name and nature, including the right at each and every corporate meeting or election to cast one vote for and in respect of each and every share of the capital stock of the Southern Railway Company on account of which such stock-trust certificates shall be issued, it being expressly stipulated that no voting right passes from the Company or from the Voting Trustees by, under or in respect of any such stock-trust certificate, or by or under any agreement expressed or implied.

54 Third. The prices and terms upon which the Southern Railway Company from time to time has issued and sold or shall issue and sell its bonds and its capital stock are those which heretofore have been or from time to time hereafter shall be approved by a majority in amount of the stockholders at their meetings, bonds to the aggregate amount of $124,500,000 having been

heretofore authorized for all purposes, including the payment of all prior liens.

Fourth. The By-Laws of the Southern Railway Company are those which, on the fifth day of July, 1894, were duly adopted by the Board of Directors of said Company at its first meeting, and upon the same day adopted and ratified by the stockholders at their first meeting, subject to the amendments thereto from time to time adopted and to be adopted as therein provided, and the officers and duties of the officers of the Company shall be as provided by such By-Laws, a true copy of such By-Laws, as amended to this date, being hereunto annexed, marked "Schedule C," forming part of this plan of organization.

In witness whereof, the said purchasers—Chas. H. Coster and Anthony J. Thomas—have hereunto subscribed their names, and the Southern Railway Company has caused its common seal to be hereunto affixed and to be attested by the signature of its President this fourth day of December, 1894.

C. H. COSTER.
ANTHONY J. THOMAS.

[Seal of Southern Railway Company.]

SOUTHERN RAILWAY COMPANY,
By SAMUEL SPENCER, *President.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, George H. Corey, a Commissioner of Deeds for the State of New York, thereto duly appointed by the Governor of the State of Virginia, and being also a Notary Public for the said City and County of New York, thereto duly appointed by the Governor of the State of New York, do hereby certify that Charles H. Coster and Anthony J. Thomas, whose names are signed to the writing hereto annexed, bearing date on the fourth day of December, 1894, have severally acknowledged the same before me in my State and corporation aforesaid.

And I do further certify that in my said State and corporation, on this fourth day of December, 1894, before me personally appeared Samuel Spencer, whose name is signed to the foregoing and hereto annexed Plan of Organization, bearing date the fourth day of December, 1894, as President of the Southern Railway Company, the corporation described in and which executed the said plan, and for himself and in behalf of the said Southern Railway Company, being informed of the contents of the said plan, did on this day acknowledge the due execution of the plan on the day the same bears date; and further acknowledged that he voluntarily executed, signed, sealed and delivered the said plan as his free act and deed,
55 and as the free act and deed of the said Southern Railway Company, for the uses and purposes therein mentioned, and for the purposes therein contained:

And the said Samuel Spencer, being by me first duly sworn, did depose and say: That he resided in the City of New York; that he is

President of the said Southern Railway Company; that he knows the corporate seal of the said Company; that the seal affixed to the foregoing Plan is the corporate seal of the said Company, and was thereto affixed by authority of the Board of Directors of the said Company, and that he signed his name thereto by like authority as President of said Company.

In witness whereof, I have hereunto set my hand and seals of office as Commissioner of Deeds for the State of Virginia, and as Notary Public for the City and County of New York, at my office, this fourth day of December, 1894.

[Seal of George H. Corey, Commissioner for Virginia.]

GEORGE H. COREY,
Commissioner for the State of Virginia in New York.

[Seal of George H. Corey, Notary Public, New York.]

GEORGE H. COREY,
Notary Public for the City and County of New York in the State of New York.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Henry D. Purroy, Clerk of the City and County of New York, and also Clerk of the Supreme Court in said City and County, the same being a court of record, do hereby certify that George H. Corey, whose name is subscribed to the certificate of acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment a Notary Public in and for the City and County of New York, dwelling in the said City, commissioned and sworn, and duly authorized to take the same and to administer oaths; and, further, that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to the said certificate of acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 12th day of December, 1894.

[Seal of the Supreme Court, City and County of New York.]

HENRY D. PURROY, *Clerk.*

56 "SCHEDULE C."

BY-LAWS

OF THE

SOUTHERN RAILWAY COMPANY,

December 4, 1894.

Stockholders.

1. The annual meeting of the Stockholders, for the purpose of electing Directors, and for the purpose of transacting such other business as may come before the meeting, shall be held on the Tuesday preceding the last Tuesday in October of each year, at the office of the Company in the City of Richmond, Virginia, and notice thereof shall be given for two successive weeks in a newspaper published in the City of Richmond.

2. A general meeting of the Stockholders may be held at any time upon the call of the Board of Directors, or Stockholders holding together one-tenth of the capital stock, upon their giving notice of the time and place for such meeting for thirty days in one of the principal newspapers published in the City of Richmond, the City of Knoxville, Tennessee, and the City of New York.

3. To constitute a meeting of Stockholders, there must be present, either in person or by proxy, those who can give a majority of all the votes which could be given by all the Stockholders. If a sufficient number fail to attend at the time and place for the meeting, those who do attend may adjourn from time to time until a meeting shall be regularly constituted. A meeting of Stockholders may adjourn from time to time until their business is completed. No notice shall be necessary for the holding of an adjourned meeting.

4. At any meeting of the Stockholders each Stockholder may, in person or by proxy, duly appointed by instrument in writing subscribed by such Stockholder, duly attested, and filed with the Secretary at or before the meeting, give one vote on each share of stock held by him in the same right.

5. In order to effect an organization, the meeting shall be called to order by the President, or in his absence by the First, Second or Third Vice-Presidents, in the order named, and a Chairman shall be elected. In the absence of the President and all the Vice-Presidents, any Stockholder, or the duly appointed proxy of any Stockholder, may call the meeting to order. The polls shall be opened as soon as the organization of the meeting shall admit of, and shall be kept open for one hour, under the supervision of three Tellers, who shall have been previously appointed by the Board of Directors; or if not so appointed, or, if in case of appointment, all or any of them shall fail to act, appointments to fill the vacancies shall
57 be made at such meeting by its Chairman. The votes for Directors, or for determining any other question as above

provided, shall be by ballot, and each Stockholder shall be entitled to one vote for each share of stock held by him.

As soon as may be after the polls are closed, the Tellers shall make and subscribe, and report to the meeting, a certificate of the result of the election, which shall be entered at large on the records; and thereupon each person elected shall be notified by the Secretary of his election.

The Directors may be residents of any part of the United States. In case any person elected shall not, within thirty days after the date of the notice of his election, signify his acceptance, the Board of Directors may declare a vacancy to exist.

6. Certificates of stock, signed by the President or one of the Vice-Presidents and by the Secretary or Assistant Secretary, and sealed with the corporate seal of the Company, shall be issued to the Stockholders, subject to such rules and regulations as the Board of Directors may from time to time prescribe; and transfers of certificates shall be made only on the books of the Company, on the written order of the holder or his duly-appointed attorney, upon surrender of the original certificate. The transfer books shall be closed for at least ten days previous to, and on the day of, the annual meeting, and at and for such other times as the Board of Directors shall order.

7. When a person to whom such a certificate is issued alleges it to have been lost, he shall file in the office of the Company, first, an affidavit setting forth the time, place and circumstances of the loss; second, proof of his having advertised the same, in a newspaper of general circulation published in the City of New York, once a week for two successive months; and, third, a bond to the Company with one or more sufficient sureties, with condition to indemnify all persons against any loss in consequence of issuing a new certificate in place of the former; and thereupon the Board of Directors may cause a new certificate to be issued.

8. For the convenience of security holders the Board of Directors may arrange for an agency in New York for the transfer of Stock and of Registered Bonds of the Company; proper records of such transfers to be kept at such agency, and to be open to the inspection of the Secretary.

Directors.

9. From and after the first annual meeting of the Stockholders the Board of Directors shall consist of nine members (of whom the President shall be one), who shall hold their office for one year, and until their successors are elected. Any vacancy in the Board may be filled by a majority of the Directors. A majority of the Board shall be a quorum for the transaction of business.

10. Regular meetings of the Board shall be held on the second Thursday of January, April, July and October, and special
58 meetings of the Board may be called by order of the President or of the Executive Committee, or of a majority of the Board, and written notice of each meeting, whether regular or special, shall be delivered or mailed to each Director a reasonable time

before the meeti .g. All such meetings shall be held either in Richmond, Knoxville, or in New York City.

11. The Directors elected at the annual meeting shall meet as soon as may be thereafter, and they shall elect a President, a First Vice-President, a Second Vice-President and a Third Vice-President of the Company, each to hold office for one year, or until the next election of the Directors, and until his successor is elected; and they shall also elect, to hold office during the pleasure of the Board, a General Counsel, a Secretary and Treasurer, and they may also elect or appoint an Auditor. The President shall be elected from among the members of the Board.

12. The order of business at all meetings of the Board, except adjourned meetings, shall be as follows:

1st. Reading the Minutes of the last meeting.
2nd. Correspondence.
3rd. Reports of Officers.
4th. Reports of Standing Committees.
5th. Reports of Special Committees.
6th. Unfinished Business.
7th. Original Resolutions and New Business.

13. In case a vacancy shall have occurred in the office of the President, First, Second or Third Vice-President, Secretary or Assistant Secretary, Treasurer or Assistant Treasurer, or Auditor, the Board of Directors shall fill the same as early as practicable, and until so filled the President, or in his absence the First, Second or Third Vice-President, in the order named, may make an appointment *pro tem.*, to fill the vacancy temporarily; or in case of temporary incapacity or absence of any officer, other than the President or First, Second or Third Vice-President, the President, or in his absence the First or Second Vice-President, in the order named, may make an appointment *pro tem.*, to act in place of the officer so temporarily incapacitated or absent, but such appointment shall be subject to change by the Board or Executive Committee at any regular or special meeting thereafter.

14. The compensation of all officers of the Company shall be fixed by the Board of Directors from time to time. Each Director shall be paid ten dollars for each meeting of the Board, and of any committee of which he is a member, at which he shall attend, in addition to transportation and other expenses actually incurred, at the rate of not exceeding four cents per mile to and from his place of residence to the place of meeting.

15. The Board of Directors shall make a report to the Stockholders at their annual meeting.

59 The Corporate Seal.

16. The Common Corporate Seal is, and until otherwise ordered by the Board of Directors shall be, an impression upon paper or wax of a circular device, such as that impressed upon the margin hereof, being an ornamental center surrounded by the words "*Southern*

Railway Company, June, 1894," within, containing circumferential lines.

The Secretary of the Company shall procure, preserve and keep duplicate stamps suitable to make such impression of such corporate seal; and, when as directed by the special or general resolution of the Board of Directors or of the Executive Committee, the President, either of the three Vice-Presidents or the Secretary or Assistant Secretary, may and shall use one or the other of such duplicate stamps in impressing such corporate seal upon the documents, indentures and obligations of the Company.

President and Vice-Presidents.

17. The President shall preside at all meetings of the Stockholders and of the Directors. In his absence the First Vice-President, Second Vice-President or Third Vice-President, in the order named, shall preside. In the absence of the President and the First, Second and Third Vice-Presidents, the members present shall appoint one of their number to preside. The President shall have general charge, control and supervision of all the business and affairs of the Company, and over all its officers, agents and employees. Except when these By-Laws otherwise provide, or the Board shall otherwise direct, all officers and heads of departments of the Company shall be appointed by him and subject to removal by him.

18. The First Vice-President shall, during the absence or inability of the President, perform his duties. During the absence or inability of the President and First Vice-President the Second Vice-President shall perform his duties, and during the absence or inability of the President and First and Second Vice-Presidents the Third Vice-President shall perform his duties. The Vice-Presidents shall also perform such other duties as may from time to time be assigned to them respectively by the President or by the Board.

19. All deeds of conveyance of the Company's lands, and all other instruments required to be executed by the Company itself, under its corporate seal, shall be signed by the President (or First, Second or Third Vice-President) for and in the name of the Company, except in such cases as the Board of Directors shall otherwise order; and the seal of the Company shall be thereto affixed by the President (or First, Second or Third Vice-President) or by the Secretary or Assistant Secretary, and attested by the Secretary or Assistant Secretary, and the execution thereof shall be acknowledged by the President (or First, Second or Third Vice-President) or other person designated by the Board to execute the same, as the act and deed of the Company, in such manner and form as may be required by law.

Other Executive Officers.

20. The Board of Directors shall have power to elect or appoint any other officers or assistants, who shall perform such duties as may be assigned to them by the Board by general rules, or from

time to time; and who shall hold their office during the pleasure of the Board.

Committees.

21. There shall be an Executive Committee, consisting of four members of the Board, of whom the President shall be one. Other Committees, standing or special, may be appointed with such duties and powers as shall be assigned to and given them by the Board. Meetings of the Executive Committee may be called by order of the President, or of a majority of said Committee to be held at such convenient place or places as he or they shall appoint, on written notice delivered or mailed to each member thereof a reasonable time before the meeting, and three members shall constitute a quorum.

In case of the anticipated absence of any member of the Executive Committee from any meeting of said Committee, or in case of inability of any member to attend such meeting, the President (or First, Second or Third Vice-President, in the order named, in his absence) may, at any time before such meeting is called to order, appoint a Director to serve during such absence or inability in place of the absent member or of the member unable to attend, but such appointment shall not extend to more than one member absent or unable to attend, and any member of the Committee present at any meeting may object to such appointee before the meeting is called to order, in which case the appointment shall be void and of no effect. No Vice-President shall be a member of the Executive Committee.

22. The Executive Committee, when the Board is not in session, shall have and may exercise, but only by the unanimous vote of all the members present at a meeting, all the powers of the Board of Directors; and they shall cause to be kept a full and accurate record of all the actions and proceedings, and report the same from time to time to the Board.

23. The said Committee shall have charge of all questions of finance, accounts and claims. It shall be the duty of this Committee, from time to time, at their discretion, and whenever directed by the Board, to audit and pass upon the accounts of the Treasurer, and to examine the transfer books of the Company; they shall report to the Board at every regular meeting, and at any special meeting, as occasion shall require.

61 24. All reports of Committees, standing or special, shall be made to the Board in writing, signed by the Chairman or by the member designated by the Committee to make the report.

25. All Committees shall be appointed by the President, unless it be otherwise directed by the Board. A majority of the members of all Committees shall be a quorum, except as limited in article twenty-one.

The General Counsel.

26. The General Counsel, subject to the President and the Board of Directors, shall have general charge and supervision of the legal business of the Company.

The Secretary.

27. It shall be the duty of the Secretary to attend all meetings of the Board of Directors and of the Stockholders, and of the Executive Committee, and record the minutes of their proceedings in suitable books to be provided for that purpose, and of which he shall be the custodian. He shall give due and timely notice to the Directors of all regular and special meetings of the Board, and of meetings of Committees to the members thereof. He shall take charge of all reports, resolutions and papers, after they shall be acted upon or submitted to the Board, and also of all letters and papers pertaining to the general business of the Company, except the official bonds. He shall be the custodian of the seal of the Company, and it shall be his duty to affix the same to all such proper instruments as the Board or the President, or either Vice-President, may direct, or to allow the President or either Vice-President so to affix it. The Directors may, if they think proper, appoint an Assistant Secretary, who shall have his office in Richmond, and perform or assist in the performance of such of the above duties as they may prescribe.

28. The Stock Books shall be kept by the Secretary, and he shall also keep transfer books, on which he shall register all transfers of stock and of registered bonds, and the names and addresses of all the transferees, unless the Board of Directors should arrange for a transfer agency in New York, in which case the said stock books and other books in this section provided for shall be kept there, subject to the supervision of the Secretary.

The Treasurer.

29. The Treasurer shall have his office in Richmond. It shall be his duty, either in person or through competent and faithful assistants, cashiers or disbursing officers, to receive and disburse, under the direction of the Board, all moneys belonging or coming to the Company; to keep regular, full and true accounts of all receipts and disbursements, and to make detailed reports of the same to the Board of Directors at the regular meetings and at all other times when required.

62 30. The moneys and securities of the Company shall be kept in such bank or banks, or other depository or depositories, as the Executive Committee or the Board may from time to time direct.

31. No payment shall be made except upon a sufficient voucher duly certified or approved by the proper officer.

32. The Treasurer and all other officers and agents who shall receive or disburse moneys, or have custody of moneys or securities,

shall give bonds, with sureties approved by the Board or by the Executive Committee, for the faithful discharge of their duties, and for the safe keeping and due delivery of the moneys, securities and other property of the Company committed to them or that shall come to their hands.

33. The Directors may, if they think proper, appoint an Assistant Treasurer, who shall have his office at such place as they may direct, and perform or assist in the performance of such of the above duties as they may prescribe.

Auditor.

34. The Auditor shall have direct charge of the general books and accounts of the Company; and it shall be his duty and he shall have power to enforce the system prescribed for keeping the same. He shall, on approval of the President or in his absence, of either of the three Vice-Presidents, prescribe the form of all payrolls, vouchers, accounts, reports and returns of every description required in his department, and also the time at which the same shall be rendered. It shall be his duty to examine the accounts of all officers and employees and to see that the proper returns are made of all receipts from traffic and other sources, and that correct vouchers are turned over to him for all disbursements for any purpose. There shall be returned to the Auditor, at such time in every month as he may prescribe, all bills and payrolls for the previous month, properly certified and made in detail. The Auditor shall approve and audit the same if found correct in every particular. But he shall not approve or audit any voucher or payroll unless it has been previously certified to by the head of the department in which it originated; and this approval will not be held to relieve him from the duty of exercising due caution and diligence in satisfying himself that the voucher or payroll is correct and duly authorized. And in case of doubt it shall be his duty to refer it back to the officer certifying the same; and if the information furnished is not satisfactory, he shall refer it to the President, or, in his absence to either Vice-President. He shall also be the custodian of all bonds of officials and agents of the company handling funds. The Auditor shall have the right to appoint and remove all necessary assistants or clerks in his department, subject to the approval of the President, or in his absence, of either Vice-President, and he shall be held responsible for the proper performance of their duties.

63 *Amendments.*

35. These By-Laws may be altered, amended, added to or repealed at any regular meeting of the Board of Directors by a vote of two-thirds of all Directors present, provided such two-thirds constitute a majority of all the Directors of the Company, and provided written or printed notice of the proposed alteration, amendment, addition or repeal shall have been given at a previous regular meeting or they may be altered, amended or added to or repealed, in like manner at

any regular or special meeting, of which written or printed notice, stating the object of the meeting as above shall have been given or sent to each Director at least ten days previous to the time appointed for such special meeting; or they may be amended at any annual or general meeting of the stockholders by a vote of a majority in amount of all the shares.

"SCHEDULE D."

AN ACT

AUTHORIZING THE PURCHASERS OF THE RICHMOND AND DANVILLE RAILROAD, THEIR ASSIGNS AND SUCCESSORS, TO BECOME AND BE A CORPORATION, TO ADOPT A NAME THEREFOR, AND TO POSSESS AND EXERCISE GENERAL POWERS; AND AUTHORIZING THE LEASING TO OR BY, AND THE CONSOLIDATION THEREWITH OF, OTHER CORPORATIONS.

[Approved February 20, 1894.]

Whereas, a certain suit in equity is now pending in the Circuit Court of the United States of America for the Eastern District of Virginia, wherein the Central Trust Company of New York is complainant, and the Richmond and Danville Railroad Company, a corporation created by and existing under the Laws of the State of Virginia, is defendant, in which suit it is sought to foreclose the consolidated mortgage, dated the twenty-second day of October, in the year one thousand eight hundred and eighty-six, and upon or about that day duly executed, acknowledged and delivered by said railroad corporation to said Central Trust Company of New York, and subsequently supplemented and confirmed by said railroad corporation by instruments dated November first, eighteen hundred and eighty-six, and April thirtieth, eighteen hundred and eighty-eight, respectively, in which suit also it is proposed to sell the whole of the mortgaged property and premises, being the rights, property, privileges and franchises of the said the Richmond and Danville Railroad Company;

And, whereas, it is deemed desirable and for the interest of this Commonwealth that the said railroad property shall be sold and reorganized in such manner and under such conditions as to secure the largest and best possible facilities and advantages of trans-
64 portation and communication for the people of this State; now therefore;

1. *Be it enacted by the General Assembly of Virginia*, that the purchaser or purchasers of the said mortgaged premises of the said the Richmond and Danville Railroad Company at the foreclosure sale thereof in the course of the said suit in equity, and such person or persons as he or they may associate with himself or themselves, shall forthwith be, and they hereby are, constituted a body politic and corporate by the name which they may select, as set forth in the conveyance of said mortgaged premises, or in any writing signed by him or them and recorded in the court in which the said con-

veyance shall be recorded, and such new corporation shall have, possess and be invested with all the estate, right, title and interest in and to such railroad and other property, with their appurtenances, and all the franchises, rights and privileges had and possessed by the said Richmond and Danville Railroad Company to the same extent as a purchaser under sections twelve hundred and thirty-three and twelve hundred and thirty-four of the Code of Virginia, and shall perform all the duties prescribed by said sections of said Code; provided, however, that said new corporation shall not be limited as to the amount or classification of its stock or bonds, except that the total amount of stock issued shall not exceed three hundred and fifty million dollars, and shall have no immunity from any lawful State, county or municipal taxation by reason of its former charter or any law heretofore exempting it from taxation.

2. Such purchaser or purchasers may associate with him or them any number of persons in the organization of the new corporation, which may create and issue its stock and its bonds secured by mortgage or otherwise, according to any plan adopted by such purchaser or purchasers, and filed as hereinafter provided.

3. It shall be the duty of such new corporation within six months after the conveyance to it of said mortgaged premises to execute a certificate in writing under its common seal attested by the signature of its President or Vice-President, referring to the sale and conveyance by which it shall have acquired title to such premises and the plan of organization adopted by the purchasers, the amount and classes or kinds of capital stock and mortgage bonds or other obligations authorized to be issued, and also specifying the name of such new corporation and of its President, and the number and names of its Directors, which certificate shall be filed in the office of the Secretary of the Commonwealth of Virginia, and a certified copy thereof shall be conclusive evidence of the existence of such new corporation.

4. In addition to its other powers, such new corporation shall have, and from time to time as occasion arises may exercise, the following powers, or any of them, namely:

(*a*) With the approval of a majority of its stockholders, given at a meeting, it may, from time to time, lease, use, operate, consolidate with, or purchase or otherwise acquire, or be leased, used, operated by, or consolidated with, any railroad or transportation company now or hereafter incorporated by the laws of the United
65. States, or of any of the States thereof, or any one or more of such railroad or transportation companies, or any other railroad or transportation company or companies which now are or hereafter may be leased, or used, or operated by, or consolidated with any one or more of such railroad or transportation companies; and, from time to time, it may consolidate its capital stock, property and franchises, by change of name or otherwise, with the capital stock, property and franchises of any other railroad or transportation company, power being hereby granted to any railroad or transportation company or companies incorporated by or under any act or acts of the General Assembly of the State of Virginia, with the approval of

a majority in amount of its or their shareholders respectively given at a meeting, to make and carry out such contracts of consolidation or lease, sale or other method of acquisition; *provided* that, in all consolidations, a copy of the agreement therefor shall be filed in the office of the Secretary of the Commonwealth of Virginia, and that any corporation with which said new corporation may consolidate, or which it may lease, shall be or remain subject to the jurisdiction of the courts of this State, and all lines of railroad operated by it in the State of Virginia shall be subject to the general laws of the State; and *provided, further,* that any stockholder who dissents from any such consolidation may within sixty days thereafter apply by petition to the Circuit Court of the City of Richmond to determine the value of his stock, and shall be entitled to receive from the new corporation the value as thus determined of such stock upon transfer thereof to the new corporation.

(*b*) It may from time to time purchase, own and hold bonds or other evidences of debt, and shares of the capital stock of any railroad company or companies formed under the laws of this or any other State, and from time to time may guarantee or assume the bonds, evidences of indebtedness or capital stock of any such railroad company.

(*c*) It may from time to time acquire or guarantee the stocks and bonds, or either, of any inland, coast or ocean transportation company or companies, operating to or from any point or points on its lines; and it may develop or aid in the development of its business by acquiring or guaranteeing the stocks and bonds, or either, of hotel, lighterage, wharf, elevating and other such enterprises convenient in connection therewith or as part thereof.

5. Said new corporation may issue its capital stock of one or more classes or kinds, and in one or more series or grades, with such preferences, conditions and voting power as shall be provided in said plan of organization, and from time to time it may increase or decrease the amount of any class or kind or grade of such stock as shall be provided in said plan of reorganization, or with the approval of a majority in amount of the stockholders, given at a meeting of stockholders called for that purpose, unless and except as otherwise expressly provided in certificates representing stock previously issued. The shares of each class of stock shall be of such par amount, and shall entitle the holders to such vote respectively as shall be determined in the said plan of reorganization or by the stockholders in like manner.

6. Such new corporation may borrow money and issue bonds or other evidence of indebtedness therefor, and may secure the same, from time to time, by mortgage or deed of trust upon any or all of its property and franchises, and such new corporation, from time to time, may issue and sell its bonds and its capital stock at such prices and on such terms as shall be specified in said plan of organization, or as a majority in amount of the stockholders shall approve at any meeting, and may receive in payment therefor property, securities or shares in any corporation mentioned in this act, and any stock so issued shall be deemed fully paid and free from any liability.

7. The business, property and concerns of said corporation shall be managed by a Board of Directors consisting of not less than five members, and one of their number shall be chosen as President. The stockholders may adopt by-laws for the government of the stock, property and concerns of the corporation, and for the regulation of its directors, officers and agents, and in and by such by-laws the stockholders may prescribe how such by-laws may be amended or repealed; provided, however, that until such by-laws shall be adopted by the stockholders the corporation shall be governed by by-laws adopted in accordance with the plan of organization.

8. The principal office of the Company shall be in the City of Richmond, in this State, at which all meetings of the stockholders shall be held; and all other offices and workshops of said Company shall be located in the State of Virginia, as far as the same may be practicable.

9. It shall be lawful for the Circuit Court of the City of Richmond, upon the petition of the President and Board of Directors, at any time to order a change in the name of the Company; but any such change of name shall be without prejudice to the rights of any creditor, or to the exercise of any of the powers and privileges granted by this act.

10. There shall be paid to the Clerk of the county or corporation in which any mortgage authorized by this act may be presented for recordation, the existing rate of taxation for such recordation upon the assessed value of the road-beds, depots, station buildings and lots, and machine shops, fixtures and rolling stock, and any real estate not included in said enumeration, in the State of Virginia, conveyed in such mortgage; and upon presentation to the Clerk of the county or corporation where it is proposed to record said mortgage of a certificate of the Auditor of the State of the amount of the assessed values of the said property within the State of Virginia, and upon the payment of the tax thereon to the said Clerk, the said mortgage shall be recorded without other charge than the clerical fees provided in such cases. Certified copies of such mortgage may be recorded in any county of Virginia in which property covered by such mortgage may be located upon payment of clerical fees.

11. All taxes and debts due or to become due the State of
67 Virginia by the corporation shall be paid in lawful money of the United States and not in coupons.

12. This act shall be in force from its passage.

February 28, 1894.

(A Copy.)

(Signed) J. BELL BIGGER,
Clerk of the House of Delegates and
Keeper of the Rolls of Virginia.

COMMONWEALTH OF VIRGINIA:

I, Chas. T. O'Ferrall, Governor of the Commonwealth of Virginia, certify that J. Bell Bigger, whose name is signed to the within

copy of an Act of Assembly bearing date the 28th day of February, 1894, is and was at the time of signing Clerk of the House of Delegates and Keeper of the Rolls of Virginia, duly elected and qualified; that he is authorized by the laws of this State to make and sign such copy of an act, and that to all his official acts full faith, credit and authority are due and ought to be given.

In testimony whereof, I have hereunto set my hand as Governor, and caused the Great Seal of the State to be affixed. Done at the City of Richmond this 28th day of February, A. D. 1894, and in the one hundred and eighteenth year of the Commonwealth.

[GREAT SEAL OF VIRGINIA.]

(Signed) CHAS. T. O'FERRALL.

By the Governor:
(Signed) J. T. LAWLESS,
Secretary of the Comonwealth and Keeper of the Seals.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH AND KEEPER OF THE SEALS OF VIRGINIA.

RICHMOND, VIRGINIA,

COMMONWEALTH OF VIRGINIA:

I, , Secretary of the Commonwealth of Virginia, certify that the foregoing is a true copy of the certificate of the Southern Railway Company, a corporation created by and existing under an Act of Assembly of the State of Virginia, approved February 20, 1894, as mentioned in Section 3 of said Act, which certificate was duly filed in my said office on the 14th day of December, 1894.

Given under my hand and the lesser seal of the Commonwealth, at Richmond, this day of , A. D.

[SEAL.]

——— ———,
Secretary of the Commonwealth and Keeper of the Seals of Virginia.

68 AN ACT

TO PROVIDE FOR THE REDUCTION OF THE CAPITAL STOCK AND THE ISSUE OF SPECIAL STOCK OF THE SOUTHERN RAILWAY COMPANY.

Approved January 23, 1900.

Whereas, pursuant to the provisions of the Act of Assembly of the Commonwealth of Virginia, approved February twentieth, eighteen hundred and ninety-four, the purchasers of the Richmond and Danville Railroad did constitute themselves a body politic and corporate by the name of

Southern Railway Company;

and also as provided by said Act, within six months after making their purchase did adopt and did file in the office of the Secretary

of the Commonwealth their certain plan of organization dated December fourth, eighteen hundred and ninety-four, whereby, among other things, they did certify that the said purchasers and the Southern Railway Company had fixed the capital stock of the corporation at one hundred and eighty million dollars, divided into one million eight hundred thousand shares, each of the par value of one hundred dollars, of which six hundred thousand shares are preferred stock and the remainder are common stock, the corporation reserving the right to increase such capital stock up to, but not exceeding the limit authorized by the said act, approved February twentieth, eighteen hundred and ninety-four, and the right to increase or to decrease the amount of any class or kind or grade of its capital stock, and also to redeem and to purchase at par any and all preferred stock, or any kind, class or grade thereof; and further did certify that with the exception of one thousand shares of common stock theretofore issued or reserved to quality Directors, or for other purposes, all of the stock of the Company had been duly issued and delivered to J. Pierpont Morgan, Charles Lanier and George F. Baker, and their successors, as Voting Trustees, under an agreement dated October fifteenth, eighteen hundred and ninety-four, with the exclusive right and privilege in said Voting Trustees, during the continuance of their trust as provided in said agreement, to vote upon and in respect of, all stock so issued to them, and also to collect and receive all dividends declared in respect of such stock, and to distribute any such dividends among the holders of their stock trust certificates, which holders in due course would be entitled to receive in exchange therefor certificates for corresponding amounts and kinds of the capital stock of the Southern Railway Company; and

Whereas, from time to time, the said corporation has issued stock certificates for the full amount of one million eight hundred thousand shares, each of the par value of one hundred dollars of
69 which six hundred thousand shares are preferred stock, and one million two hundred thousand shares are common stock, all of which stock certificates (excepting those for such one thousand shares of common stock) have been duly issued to, and now are held by, the said Voting Trustees under the said Voting Trust Agreement dated October fifteenth, eighteen hundred and ninety-four; and

Whereas, in and by Section five of the said Act, approved February twentieth, eighteen hundred and ninety-four, it was provided that the said new company might issue its capital stock of one or more class or kinds and in one or more series or grades, with such preferences, conditions, and voting power as should be provided in said plan of organization; and from time to time might increase or decrease the amount of any class or kind or grade of such stock as should be provided in the plan of organization, or with the approval of a majority in amount of the stockholders given at a meeting of the stockholders called for that purpose, unless and except as otherwise expressly provided in certificates representing stock previously issued; and that the shares of each class of stock should be of such par amount, and should entitle the holders to such vote, respectively,

as should be determined by said plan of organization, or by the stockholders in like manner; and

Whereas, no express provision concerning any increase or decrease of the common capital stock is contained in any outstanding certificate representing common stock, and it is deemed desirable for the interests of the Company and of the Commonwealth that the nominal value of such common stock shall be reduced so as to conform more nearly to the market value thereof; *now, therefore,*

1. *Be it enacted by the General Assembly of Virginia:* That in the manner hereinafter provided, with the consent of holders of a majority of all outstanding stock of the Southern Railway Company, including at least a majority of outstanding common stock, the Board of Directors of the Company, from time to time in reduction of the amount of its stock, may issue one share of a new or special stock as hereinafter described, in lieu and instead of the issue of two shares of the stock authorized by said Act approved February twentieth, eighteen hundred and ninety-four, but not heretofore issued, or in exchange for every two shares of the common stock now outstanding that may be surrendered for that purpose and cancelled. The company may agree to pay a dividend or other cash sum in connection with such exchanges of outstanding common stock; the amount of such dividend or other cash sum to be fixed by the Board of Directors, and payment thereof to be made at such time and in such manner as in its discretion the board may determine. The consent hereunder of stockholders may be given either in writing or by vote at a meeting or by a combination of consents in writing or by vote.

2. Holders of stock trust certificates may authorize the Voting Trustees as holders of the corresponding amount of stock to consent to such reduction, and may confer any other authority upon the Voting Trustees by presentation of such certificates to the Voting Trustees, in order that a notation of such authority may be stamped thereon. Such stamp on any stock trust certificate shall be conclusive proof that the holder thereof has given such authority, which shall bind all transferees of such certificate and of any interest thereby represented, and shall be irrevocable. In exchange for stock trust certificates stamped as aforesaid there shall be issued stock trust certificates either in the present form similarly stamped, or in a new form adapted to the conditions as altered under this Act.

3. If and when the holders of a majority of the outstanding stock, including such amount of the outstanding common stock (not less than a majority thereof) as shall be satisfactory to the Board of Directors, shall have consented to the reduction herein authorized, the company from time to time within such period or periods as shall be prescribed or extended by the Board of Directors, shall issue a new certificate for one share (of the par value of one hundred dollars) of the special stock authorized by this Act in exchange for every two shares of outstanding common stock surrendered for that purpose; and as hereinbefore authorized, thereupon shall make pay-

ment of such dividend or other cash sum, if any, as it may have agreed to pay.

4. All such special stock, whether issued as herein permitted in lieu of authorized common stock, or in exchange for outstanding common stock, shall be distinguished by printing on or in the certificates to be issued therefor, a statement that such stock was issued under the provisions of this Act. Until more than ninety-five per centum of the common stock then outstanding shall have been exchanged as herein permitted, and thereafter until otherwise determined by the Board of Directors, each share of such special stock shall entitle the holder thereof to receive the same dividends as though he were the holder of two shares of present common stock theretofore converted into such one share of special stock.

5. From time to time, in exchange for such amount of special stock as under this Act shall be issuable therefor the Voting Trustees may surrender to the company certificates for present common stock to the amount which by stamping or otherwise shall have been authorized by the holders of common stock trust certificates; and at the termination of the voting trust the holders of such stamped common stock trust certificates shall receive from the Voting Trustees, in lieu of the common stock so surrendered to the company and mentioned in such trust certificates special stock to the extent of one-half of such amount of such common stock. Any dividend or other cash sum that may be received by the Voting Trustees in connection with such exchanges of common stock shall be payable by them to the holders of the stamped common stock trust certificates at such time or times as the Voting Trustees may determine. After the termination of the voting trust, the Voting Trustees and the Board of Directors, upon such terms as they may deem expedient may make arrangements for the issue of special stock in redemption of unstamped common stock trust certificates then outstanding.

6. Nothing in this Act contained shall impair the existing and continuing right of the Southern Railway Company to in-
71 crease or to decrease its capital stock of any class or grade, whether preferred, special or common, under and in accordance with said Act of Assembly, approved February twentieth, eighteen hundred and ninety-four. With the approval of the holders of a majority of the capital stock, given at a meeting of the stockholders called for that purpose after the termination of the voting trust, the company may decrease the amount of its common stock to one-half the amount thereof by reducing the number of shares of common stock of one hundred dollars each then held by each stockholder to one-half of such number.

7. This Act shall be in force from its passage.

A true Copy.

Teste:

____ ____,

Clerk of the House of Delegates and Keeper of the Rolls of Virginia.

Date

AN ACT

TO AMEND AND RE-ENACT SECTION 7 OF AN ACT APPROVED FEBRUARY 20, 1894, ENTITLED "AN ACT AUTHORIZING THE PURCHASERS OF THE RICHMOND AND DANVILLE RAILROAD, THEIR ASSIGNS AND SUCCESSORS, TO BECOME AND BE A CORPORATION, TO ADOPT A NAME THEREFOR, AND TO POSSESS AND EXERCISE GENERAL POWERS; AND AUTHORIZING THE LEASING TO OR BY, AND THE CONSOLIDATION THEREWITH OF, OTHER CORPORATIONS."

Approved February 26, 1902.

1. *Be it enacted by the General Assembly of Virginia:* That Section Seven of an Act, approved February twentieth, eighteen hundred and ninety-four, entitled "An Act authorizing the purchasers of the Richmond and Danville Railroad, their assigns and successors, to become and be a corporation, to adopt a name therefor, and to possess and exercise general powers; and authorizing the leasing to or by, and the consolidation therewith of, other corporations," be and hereby is amended and re-enacted to read as follows:

§ 7. The business, property and concerns of said corporation shall be managed by a Board of Directors consisting of not less than five nor more than fifteen members, and one of their number shall be chosen as President. The corporation, at a general meeting or at an annual meeting, may from time to time increase or decrease, within the limits hereinbefore fixed, the number of Directors to be elected at the next annual meeting, but in case of such increase or decrease, the number to be elected shall be specified in the notice of the meeting at which the election is to be held. By the vote of a majority of the stockholders present or represented at any general meeting or at any annual meeting, the corporation may classify its Directors into three classes, as nearly as may be equal in num-
72 bers. In case such classification is made, the term of office of the Directors of the first class shall expire in one year, of the Directors of the second class in two years, of the Directors of the third class in three years, from the annual meeting at which the first Directors so classified are chosen under this Act and at each annual meeting thereafter, the Directors then to be elected shall be elected for three years. Every Director shall continue in office until the expiration of the term for which he was elected, and until his successor shall have been elected and shall have accepted his office.

All vacancies shall be filled and all Directors for whose election provision is not otherwise made in this Act, shall be elected in accordance with the by-laws. The stockholders may adopt by-laws for the government of the stock, property and concerns of the corporation, and for the regulation of its Directors, officers and agents, and in and by such by-laws the stockholders may prescribe how such by-laws may be amended and repealed, provided, however, that until otherwise voted by the stockholders, the corporation shall be governed by the by-laws of the Southern Railway Company, adopted

in accordance with the plan of organization of the Southern Railway Company filed in the office of the Secretary of the Commonwealth, dated December the fourth, eighteen hundred and ninety-four.

2. All acts and parts of acts inconsistent herewith are hereby repealed.

3. This Act shall be in force from its passage.

A true Copy.

Test:

____ ____,

Clerk of the House of Delegates and Keeper of the Rolls of Virginia.

Date

COMMONWEALTH OF VIRGINIA:

I, , Governor of the Commonwealth of Virginia, certify that , whose name is signed to the within copies of Acts of Assembly of Virginia, approved, respectively, February 20, 1894, January 23, 1900, and February 26, 1902, bearing date the day of , , is, and was, at the time of such signing, Clerk of the House of Delegates and Keeper of the Rolls of Virginia, duly elected and qualified; that he is authorized by the laws of this State to make and sign such copies of Acts of Assembly of Virginia; that such attestation is in due form and by the proper officer, and that to his official acts full faith, credit and authority are due and ought to be given.

And I further certify that whose name is signed to the within attestation of the Certificate of Southern Railway Company mentioned in Section 3, of the Act of Assembly of Virginia, approved February 20, 1894, bearing date the day of , is, and was, at the time of such signing, Secretary of the Commonwealth of Virginia, duly elected and qualified;
73 that he is the keeper of the records in which said certificate is recorded, and that he is authorized by the laws of this State to make and sign such attestation; that such attestation is in due form and by the proper officer, and that to all his official acts full faith, credit and authority are due and ought to be given.

In testimony whereof, I have hereunto set my hand as Governor, and caused the Great Seal of the Commonwealth to be affixed.

Done at the City of Richmond, this day of , in the year of our Lord , and in the year of the Commonwealth.

BY THE GOVERNOR:

____ ____,

Secretary of the Commonwealth and Keeper of the Seals.

74 EXHIBIT No. 2.

[House Bill 640—Senate Bill 25.]

AN ACT TO PROVIDE FOR THE ASSESSMENT OF REAL ESTATE OF RAILROAD COMPANIES IN THE STOCK-LAW TERRITORY FOR LOCAL BENEFIT.

The General Assembly of North Carolina do enact:

SECTION 1. That the North Carolina Corporation Commission shall assess the value of real estate belonging to any railroad company within stock-law territory in this State at the same time that they assess railroad property for general purposes.

SEC. 2. That every railroad company shall report to the Corporation Commission on blanks to be furnished by them, mileage of such railroad within the stock-law territory, width of right-of-way, weight of rails, value of rails and ties, number, description, and value of all structures within the stock-law territory, and all other information necessary to enable the Corporation Commission to ascertain the value of said real estate. That after assessment shall be made it shall not be changed until the year for the assessment of real property for general tax purposes, except that the Corporation Commission shall correct any assessment of real property on which any structure over one hundred dollars ($100) in vlaue may have been erected, or on which any structure of like value may have been destroyed, as the value of said real estate may be affected thereby.

SEC. 3. This act shall be in force from and after its ratification.

SEC. 4. All laws in conflict with this act are hereby repealed.

In the General Assembly read three times, and ratified this the 8th day of March, A. D. 1907.

EXHIBIT No. 3.

[House Bill 1484—Senate Bill 1242.]

AN ACT TO PRESCRIBE THE HOURS OF SERVICE OF EMPLOYEES OF RAILROAD COMPANIES ENGAGED IN THE OPERATION OF TRAINS.

The General Assembly of North Carolina do enact:

SECTION 1. That is shall be unlawful for any railroad company doing business in the State of North Carolina, or for any officer, agent or employee thereof who has the direction or con-
75 trol over any employee or agent of the classes mentioned below, to cause or knowingly permit or allow any employee belonging to any such class to render any service for such railroad company pertaining to the movement of trains, for a greater number of hours in any twenty-four hours than is hereinafter specified, to-wit:

(*a*) Any employee doing the work of a train dispatcher (or tele-

graph operator), having in charge in any degree the direction of the movement of any train or trains in North Carolina, for more than eight hours in any twenty-four hours: *Provided*, the Corporation Commission of North Carolina is hereby authorized to permit any such telegraph operator at any station on any road in this State to work for a longer time, not exceeding twelve hours in any twenty-four hours, where the said Corporation Commission shall determine that the safety of the traveling public will not be endangered by such extension of hours.

(*b*) Any conductor, flagman, engineer, brakeman, fireman or other member of any train crew, for more than sixteen hours in any twenty-four hours.

SEC. 2. That any railroad company, or officer or agent thereof, having the direction of or control over any employee mentioned in section one of this act, who shall violate any of the provisions hereof, shall be guilty of a misdemeanor, and upon conviction such railroad company shall be fined not less than five hundred dollars; and such officer or agent shall be fined or imprisoned, or both, in the discretion of the Court.

SEC 3. That any train dispatcher or telegraph operator, having in charge in any degree the direction of the movement of any train or trains in North Carolina, who shall work more than eight hours in any twenty-four hours as an employee performing the duties aforesaid, except as shall be permitted by the Corporation Commission under the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the Court.

SEC. 4. Any conductor, flagman, fireman, engineer, brakeman, or other member of any train crew, who shall work for any railroad company more than sixteen hours in any twenty-four hours, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the Court: *Provided*, that it shall not be held a violation of this act by any conductor, brakeman, flagman, engineer, fireman or other member of any train crew who shall work more than sixteen hours in any twenty-four hours in order to clear the track or tracks of said railroad company from wrecks, washouts, or obstruction caused by the act of God, so that they may bring the train or trains operated by them to a station on said road, which station shall be either the schedule destination of said train or the station at which there is regularly a change of train crews; nor shall it be held a violation of
76 this act by the corporation, officers or agents thereof, to permit the said conductor, flagman, brakeman, fireman, engineer or other member of a train crew to work overtime under the circumstances and conditions hereinbefore stated.

SEC. 5. This act shall be in force from and after its ratification.

In the General Assembly read three times, and ratified this the 8th day of March, A. D. 1907.

EXHIBIT No. 4.

[House Bill 1052—Senate Bill 1243.]

AN ACT TO AUTHORIZE THE CORPORATION COMMISSION TO REQUIRE RAILROADS TO ERECT AND MAINTAIN UNION DEPOTS IN TOWNS OF TWO THOUSAND INHABITANTS.

The General Assembly of North Carolina do enact:

SECTION 1. Wherever two or more railroads now, or hereafter may, maintain freight depots and a union passenger depot within one mile of a town of two thousand population for the convenience of the inhabitants thereof, and do not enter the corporate limits of the said town, it shall be the duty of the Corporation Commission, upon the petition of a majority of the qualified voters of the said town, which petition shall be properly sworn to by the signers thereof, to require and compel, where practicable, the said railroads to run their lines into or through the corporate limits of the said town, and construct, equip, and maintain suitable passenger and freight depots at some convenient place or places therein, and the passenger depot shall be a union station and be built and maintained by the several railroads according to a plan and in such a manner as shall be approved by the Corporation Commission.

SEC. 2. Whenever a petition shall be filed with the Corporation Commission as aforesaid, the said Corporation Commission shall set a day for the hearing thereof, which day shall be not more than twenty days from the filing of said petition, and shall immediately cause a notice to issue to the railroads interested in the matter set out in the petition, and after the hearing of the matter on the day named in the said notice, the said Commission, if a majority of its members shall deem it practicable, shall thereupon cause an order to be made requiring the said railroads to build, equip, and maintain in a suitable manner, road-beds, yards, and depots, and any other necessary buildings or equipment, at convenient places within
77 the limits of said town, as to a majority of them shall seem proper for the needs and growth of the business and inhabitants of the said town.

SEC. 3. The said order of the Corporation Commission to the said railroads shall name a time within which all the necessary work of entering the said town and construction of depots and other buildings shall be completed and opened to the public for the transaction of business, and the said railroads, for every day beyond the said time that they shall not be in operation according to the said order, shall pay the sum of fifty dollars for each and every day for such failure and neglect, to the Board of Commissioners or Aldermen of said town, which shall be for the benefit of the said town, this amount to be recovered as in other actions.

SEC. 4. This act shall also apply to any railroad that may hereafter enter into or run within one mile of the corporate limits of said town, and the Corporation Commission shall have the power to

require such railroads to unite with the other railroads in maintaining the depots, tracks, and other structures, and also pay such part of the cost thereof as to the said Corporation Commission may seem proper.

SEC. 5. The said railroads shall have the power to condemn such quantity of lands, including gardens, yards, residences and the premises pertaining thereto, as shall be necessary for the purposes of this act, the condemnation proceedings to be had in the same manner as now provided by the Revisal of one thousand nine hundred and five and amendments thereto.

SEC. 6. This act shall be in force and effect from and after its ratification.

In the General Assembly read three times, and ratified this the 11th day of March, A. D. 1907.

EXHIBIT No. 5.

[House Bill 2153—Senate Bill 256.]

AN ACT TO EXTEND AND ENLARGE THE POWERS OF THE NORTH CAROLINA CORPORATION COMMISSION.

The General Assembly of North Carolina do enact:

SECTION 1. That in addition to the powers already conferred upon and possessed by the North Carolina Corporation Commission it shall have power:

(*a*) To make any necessary and proper rules, orders and regulations for the safety, comfort and convenience of passengers, shippers or patrons of any public service corporation, and to require the observance of the same by the company and its employees.

78 (*b*) To require any railroad company to install and put in operation and maintain upon the whole or any part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road upon which is not operated as many as or more than eight trains each way per day.

(*c*) To require the raising or lowering of any track or highway at any highway crossing and to designate who shall pay for the same, when they think proper, partition the cost of abolishing grade crossings and the raising or lowering of said track or highway among the railroads and municipalities interested.

SEC. 2. That section one thousand and sixty-six of the Revisal of one thousand nine hundred and five be amended by adding thereto the following: "and to require all transportation and transmission companies to establish and maintain all such public service facilities and conveniences as may be reasonable and just."

SEC. 3. That section one thousand and ninety-seven of the Revisal of one thousand nine hundred and five be amended by adding thereto subsections six and seven and eight, as follows:

(6) To require when practicable and when the necessities of the traveling public, in the judgment of the Corporation Commission,

demand, that any railroad in this State shall install and operate one or more passenger or freight trains over its road, and also require any two or more railroads having intersecting points to make close connection at such points: *Provided*, that no order under this act shall be made unless the business of the railroad justifies it.

(7) From time to time to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the public's safety and convenience; and if any are found by them to be unsafe, they shall at once notify and require the railroad company to put the same in repair.

(8) That all powers and duties in every respect conferred by law upon the Corporation Commission with respect to railroads and other transportation companies are hereby conferred upon said Corporation Commission to control and regulate telegraph, telephone and all other companies engaged in transmission of messages, in so far as they apply.

SEC. 4. That section one thousand and ninety-six of [the Revisal of] one thousand nine hundred and five be amended by inserting after the word "transmission" the words "and delivery," and by inserting after the word "telegraph" the word "company"; and by striking out the remaining part of said section and inserting in lieu thereof the following: "and to make just and reasonable rates of charges for the rental of telephones and furnishing telephonic communication by any telephone company or corporation."

79 SEC. 5. That section one thousand one hundred and ten be amended by inserting after the word "person," in the first line thereof, the words "or community," and by inserting after the word "discrimination," in the second line thereof, the words "or unjust or unreasonable rate," and by adding to said section the following: "The Corporation Commission shall have authority to employ counsel whenever and for such periods of time as in their judgment it is necessary to do so, and counsel so employed shall be paid such fee and compensation as may be agreed upon by them."

SEC. 6. All persons and corporations affected by this act shall have the same right of appeal from the action of the Corporation Commission under the powers contained in this act as are now provided by law.

SEC. 7. That subsection nine of section two thousand five hundred and sixty-seven of the Revisal of one thousand nine hundred and five be and is hereby repealed.

SEC. 8. That this act shall be in force from and after its ratification.

In the General Assembly read three times, and ratified this the 11th day of March, A. D. 1907.

Received at Raleigh, N. C., May 9, 1907 and executed this May 9, 1907 by delivering a copy of within Bill of Complaint to Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield at their office Raleigh, N. C. and on May 10, 1907 executed on Rob't D. Gilmer and Hayden Clements, by delivering a copy of within Bill

of Complaint to Miss Sarah Burkhead, stenographer of said parties at office of Attorney General Raleigh, N. C.

CLAUDIUS DOCKERY,
U. S. Marshal,
Per E. A. MITCHELL, *O. D. M.*

Marshal's cost $10.00.

Returned and filed May 10th, 1907.
H. L. GRANT, *Clerk.*

80 In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

SOUTHERN RAILWAY COMPANY
versus
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT.

Answer.

Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, Hayden Clement, Defendants.

Robert D. Gilmer, Attorney-General.

Hayden Clement, Assistant Attorney-General.

James E. Shepherd, F. A. Woodard, R. W. Winston, Victor S. Bryant, Walter E. Daniel, Counsel for Defendants.

81 In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

SOUTHERN RAILWAY COMPANY
versus
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT.

Answer.

The defendants, Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer and Hayden Clement, now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the bill of complaint herein, and also as to the jurisdiction of the Court as to all or some of the parties and to all or some of the subjects-matter named and set forth therein, and protesting that this is substantially a suit against the State of North Carolina, and against its consent, jointly and severally, answering, say:

(1)

That as to paragraphs 2 and 3 of the bill of complaint, they admit that the complainant under an act passed by the Legis-
82 lature of the State of Virginia became a corporation of that State sometime in 1894, and that the said act provided that

it should have the authority to lease, use, operate and consolidate with, or purchase, other railroads, either within or without the said State; but these defendants deny that any authority was ever granted by the State of North Carolina to the said complainant, whereby it could lease, use, operate or consolidate any of the railroad corporations of the State of North Carolina mentioned in the bill of complaint so as to exempt them from the right of the State to supervise, regulate and control the same, and especially to fix and prescribe rates for the carriage of freight and passengers over said roads, whether by fixing and prescribing maximum rates or otherwise: such power to fix and prescribe rates being entirely unlimited except as restricted by the Fourteenth Amendment to the Constitution of the United States; and also to provide penalties for the failure to furnish cars or for the violation of or failure to perform any other law or regulation provided by the general corporation laws of the State or any acts amendatory or supplementary thereto, or any rule of the North Carolina Corporation Commission made under authority of such laws.

(2)

The defendants admit that the complainant has been doing intra- and inter-state commerce as set forth in paragraph 4 of the bill. They also admit that the General Assembly of North Carolina, in March, 1907, passed the two acts set forth in paragraph five of said bill, which are respectively entitled, "An act to prevent unjust discrimination in freight rates and to fix the maximum charges therefor," and "An act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina."

83

(3)

The defendants admit the passage, in 1899, of "An act to establish the North Carolina Corporation Commission," mentioned in paragraph 6 of the bill, and also that certain amendments were made thereto, but do not admit that the said paragraph contains an accurate and complete summary of said laws. They therefore pray that for greater certainty said acts be consulted when they are relied upon or referred to by any party to this suit.

(4)

The defendants admit paragraph 7 of the bill, which sets forth the official positions of the defendants and their residence, that is to say, that the defendants Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield are the members of the North Carolina Corporation Commission, and that defendants Robert D. Gilmer is Attorney-General and Hayden Clement is Assistant Attorney-General.

(5)

(*a*)

The defendants, answering paragraph 8 of the bill of complaint, deny that the said "Act in Respect to Freight Rates" and the said

"Act in Respect to Passenger Rates" will have the effect of depriving the complainant of its property "without just compensation and without due process of law and to deny it the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States," as alleged in said bill; and they further say that in enacting the said laws the General Assembly was legitimately excercising the sovereign powers of the State of North Carolina, and

84 that these sovereign powers in respect to the said laws are entirely unlimited, except as restricted by the Fourteenth Amendment to the Federal Constitution; that, vested with these sovereign powers, the State is charged with corresponding duties of the gravest character, the performance of which is essential to the good government and the prosperity and happiness of its people; and, in view of its rapidly increasing population, the great development of its natural and agricultural resources and the tremendous multiplication of its commercial and industrial activities, and the marked discrimination in rates made by the complainant and other common carriers doing business in the State, it more than ever before became its duty to provide that no greater tax in the way of freight and passenger rates should be imposed upon its people by those undertaking to perform services of a public nature than is a just compensation for the value of such services; that fully appreciating this serious responsibility, the General Assembly, actuated, these defendants believe, solely by the foregoing considerations, and with no purpose whatever to do injustice to the complainant or other railroad corporations doing business within the State, and after hearing the representatives of complainant and of other railroads doing business in the State, and after due investigation, determined that the maximum rates fixed in said bills were fair and just alike to such corporations and the people; and the defendants aver that they are fair and just to complainant, and therefore valid and binding. And these defendants respectfully insist that the determination of the said legislative body, in the exercise of the sovereign powers of the State as aforesaid, should be respected and obeyed by the complainant until it shall have established its contention, in the language of the highest tribunal in the land, "clearly and beyond all doubt," and not by mere general averments or speculative theories based upon inaccurate statements and estimates as contained in the bill herein.

85 (*b*)

The defendants deny that the existing rates and charges in effect upon the complainant's lines in the State of North Carolina, and applicable to intrastate business in said State, are not higher than is just and reasonable, whether considered in respect to the value of the property used in the public intrastate service in said State, or in respect to the value of the service rendered to the shippers or to the travelers upon its lines, and allege that the passenger rates and some of the freight rates are excessive, unjust and unreasonable. They admit that the rates and charges now in use on complainant's lines in North Carolina are, in respect to the traffic covered by the "Act in Respect to Freight Rates," the sum of the present local

rates now established, prescribed or approved by the State Corporation Commission, less reduction of 10 per cent. of the said local rates, and they admit that the published passenger rates of the complainant, and the rates charged some of the passengers using its lines in intrastate traveling, are 3¼ cents per mile for first-class fare and 2¾ cents per mile for second-class fare, but they deny that all passengers pay these rates.

For more than twenty years, recognizing the well-established fact that lower rates increase passenger travel, the complainant and the Richmond and Danville Railroad Company, its predecessor, operating lines of railway in North Carolina, now operated by complainant, have offered and given the passengers a lower rate than that which they now allege to be a just and reasonable rate; that during said time, and now, the complainant and its predecessors have been selling, and the complainant is now offering for sale and selling over its lines within this State, thousand-mile tickets for general use at the rate of 2½ cents per mile; that during much of said
86 time, and now, the complainant has offered for sale and sold tickets over its line covered by the "Act in Respect to Passenger Rates" for less than the rate prescribed in said act; that now and for many years, from June 1st to October 31st of each year, that is, during five months of the year, the complainant sells and has been selling what it denominates "Season Tickets" over its line from points in eastern and central North Carolina, to Hickory, Connelly Springs, Waynesville, Morganton, Asheville, Brevard, Hendersonville, and other points on its line in western North Carolina, at a rate of 2 cents per mile, or approximately 2 cents per mile; a round-trip ticket for first-class passenger from Raleigh, North Carolina, to Waynesville in said State, a distance of 298 miles each way and covered only by complainant's lines, could be purchased for $12; a similar ticket can be purchased from Raleigh, North Carolina, to Asheville in said State, a distance of 271 miles, covered only by complainant's lines, for the sum of $10.90, and similar rates are offered by the complainant between the points in this State and points in western North Carolina; that special rates are given at other seasons of the year, and at all seasons for special occasions, and in many instances these rates are less than 2¼ cents per mile, and in others as low as or less than 2 cents per mile; that for many years complainant has been, and is now, selling to ministers of this State, numbering many individuals who travel much upon its lines, tickets good on first and second class passenger cars at the rate of 2 cents a mile; that as shown by complainant's sworn report to the North Carolina Corporation Commission for the year ending June 30, 1906 (the original of which and of all other reports referred to in this answer the defendants are ready to produce), the average pas-
87 senger rate over complainant's lines covered by said "Act in Respect to Passenger Rates" was .02508 cents per mile for pay passengers, and for the year ending June 30, 1904, it was .0239 per mile, and for the year ending June 30, 1905, it was .02386 per mile; and although much of its mileage extends into and through States and into sections not so thickly populated as the sec-

tions of North Carolina traversed by complainant's lines, its average passenger rate over its entire line for the year ending June 30, 1906, was only .0241 cents per mile for pay passengers; that the complainant and its predecessors in possession of, or leasing or controlling and operating the lines now leased or controlled and operated by the complainant, now is, and for many years has been giving free transportation to many individuals and families using its lines covered by said "Act in Respect to Passenger Rates;" that this discrimination in favor of individuals and families of North Carolina became so marked and fraught with so much danger to the Commonwealth that its Legislature in the year 1891, chapter 320, section 4, of the Public Laws of North Carolina for 1891, forbade the issuance of free passes except to certain classes; but notwithstanding said act, the complainant continued to issue free transportation to certain individuals in favor of whom it desired to make discrimination, and in order to prevent the complainant violating this law, it was indicted in the courts of North Carolina and fined; but nevertheless, complainant is now furnishing to many individuals, not the objects of charity, but usually men, or the members of families of men of large influence or means, or controlling much freight traffic, free transportation over its lines in North Carolina; that it is impossible for the defendants to state the exact number of passengers carried free by the complainant during the period from June 30,
88 1905, to June 30, 1906, or during any one of the recent years, but they are informed and believe that the number of passengers and the distance which they are carried by complainant without charge is considerable; that should the complainant cease to make these discriminations and charge all those using its lines the rates fixed by the Legislature of North Carolina of 1907, in the "Act in Respect to Passenger Rates," its receipts for passenger service in the State would not be so much reduced by said act, even though the reduction of the rates prescribed in said act did not result in increasing the number of passengers using complainant's lines.

That while defendants are not informed as to discriminations made by the complainant in intrastate freight business, they know that now, and since its incorporation in the State of Virginia in the year 1894, the complainant has discriminated in freight rates against the citizens and shippers doing business in the State of North Carolina and has given the citizens and shippers doing business in the State of Virginia a more favorable freight rate than it has accorded to the citizens and shippers of North Carolina, and this is made more fully to appear in defendants' answer to paragraph 12 of complainant's Bill of Complaint herein.

(c)

While denying that the experience of the year ending June 30, 1906, or of previous years, is at all conclusive as to what it may be in the future with its rapidly changing conditions, the defendants nevertheless deny the accuracy of the statements contained in said bill and the inferences or deductions therefrom. They further say that such statements are not in accord with the complainant's sworn

reports to the Corporation Commission, which, so far from showing that an application of the rates complained of to the intrastate business for the year ending June 30, 1906, would have reduced
89 the income to a confiscatory amount, will demonstrate that on such a basis the income for said year would have been considerably in excess of a just compensation for the value of the service rendered or the use of the property employed. And for a more detailed answer to said statements, estimates and deductions of the complainant in this respect, the defendants say it is not true, as stated in the bill, that "the maximum earnings from the intrastate traffic in North Carolina, after paying the costs of operation for said year," amounted to only $453,811.41. On the contrary, as appears from said reports, the maximum earnings, after paying the costs of operation for said year, amounted to $823,546.80, and this is shown by the sworn report of the complainant to the defendant Corporation Commission, dated the 19th day of November, 1906. Deducting from this amount, as claimed in the bill of complaint, the sum of $74,423.73 for taxes and $54,633.04 for betterments, the maximum net earnings on intrastate business for said year would be $694,490.03. This would produce an income of 9 3/5 per cent. on $7,213,322.74—the proportionate value of the property used in intrastate business, according to the assessed value of the whole, $26,134,865, as estimated in the bill of complaint. Even assuming (which is denied) that the effect of the rates provided in the said acts of the Legislature would have reduced the net earnings to the extent of $296,747.17, there would still be left net earnings to the amount of $397,742.86, instead of $828,007.47, as claimed in the bill, and this would yield an income of 5½ per cent. on the value aforesaid.

(*d*)

The defendants further say that the percentage of income of 5½ per cent. above mentioned, is considerably above the percentage of the actual net income, which is, according to complainant's
90 reports, more than 9 per cent. on the assessed value of the property employed in intrastate commerce. This result is reached as follows: It appears from the report of the complainant that the gross earnings in the State, including freight, passenger, express, mail and miscellaneous earnings, were $3,159,156.89, and that the operating expenses charged against such intrastate traffic were $2,335,610.09. This amount so charged against intrastate traffic for operating expenses is clearly erroneous, and this appears from the reports, which show that the percentage of operating expenses on lines owned and leased by complainant would be, according to the following table, which is based upon the said reports:

	Gross Earnings.	Percentage.	Net Earnings.
Southern Railway.....	$1,206,705.68	57.75	$696,872.53
A. & C. Air Line.....	84,861.38	72.31	61,363.27
A. & Yadkin.....	275,362.75	79.92	220,059.91
H. P. R. A. & S.....	61,940.21	57.36	35,522.71
North Carolina R. R...	1,176,507.66	66.43	781,554.04
N. C. Midland.....	111,076.72	58.59	65,190.93
Southern Ry.—Carolina Div	123,498.57	100.12	123,646.76
State University.....	11,335.09	115.06	13,042.15
Yadkin Railroad.....	107,868.83	66.26	71,473.89
Total	$3,159,155.89	65.48	$2,068,726.19

The result being that the amount chargeable against the intrastate traffic should have been only $2,068,726.19, instead of $2,336,610, thus making the net earnings $1,080,420, instead of $823,346, as above stated. Upon the foregoing basis of correction the maximum actual net earnings from intrastate business in North Carolina, after deducting $74,423.73 taxes and $54,633.04 for betterments, would be $951,363.23, instead of $324,764.64, as stated in the bill. If by the acts complained of, the reduction in the net earnings would have been $296,747.17, there would still have been left $654,616.06 net earnings, instead of $28,007.47, as claimed by complainant. This would have been more than 9 per
91 cent. of the assessed value of so much of the complainant's property as is used in intrastate commerce in North Carolina, and would yield a fair profit even if the value of the property is greatly in excess of its assessed value.

The foregoing percentages as appear in the above table are reached by eliminating from the operating expenses as reported by the complainant, the item of taxes, which was considered by the complainant in estimating the percentages reported for each company owned or operated by it. Such taxes are no part of the operating expenses, and the bill of complaint herein also excludes them as such operating expenses.

(*c*)

The defendants, in further support of the reasonableness of the rates complained of, say that, as appears from the reports of the complainant to the defendant Commission, the earnings, inter- and intrastate, were for the year ending June 30, 1906, as set forth in the following table, and that the operating expenses and taxes were as set forth in said table:

Southern Railway Company.

Inter- and Intrastate in North Carolina.

Freight earnings	$8,520,201.29
Passenger earnings	3,439,144.56
Other sources	60,964.31
Total	$12,020,310.16
Operating expenses	7,761,935.23
Net earnings from operation	$4,258,374.93
Less taxes	271,156.80
Net after paying taxes	$3,967,218.13

The defendants say that, assuming that the loss of income by reason of the acts complained of will be the sum of $296,747.17, as alleged by the complainant, there would still be left net
92 earnings from complainant's business in North Carolina of $3,690,470.96, which would equal 14 per cent. of the assessed valuation of complainant's property in North Carolina.

(*f*)

The defendants further say the percentage of profit as above estimated would have been much greater, if it be true, as they are informed, that large sums have been expended by complainant in extravagant salaries, and for the purpose of promoting or preventing legislation by the employment of lobbyists and newspapers, also investments in newspapers and money paid to correspondents, and for other improper purposes. And defendants pray that these matters may be inquired into.

The defendants further allege that, as appears from the statement of said complainant filed with the Corporation Commission, the complainant paid for the year ending June 30, 1906, on account of injuries to persons, $860,335.53; on account of loss of property and damage to same, $1,199,848.17; for clearing wrecks, $137,746.35. The liability for these sums was incurred by reason of the negligent management of complainant, and that no part of said sums should be charged to the operating expenses of complainant, as defendants are advised.

They are informed and believe that during said year the complainant paid large sums of money for penalties incurred by its negligence in forwarding freight received for shipment. That no part of this amount so paid should be charged to the operating expenses of complainant, as defendants are advised.

The defendants further allege that the complainant paid for the fiscal year ending June 30, 1906, $571,248.46 on account of expense of outside agencies, etc., and the sum of $101,295.68 for advertising. That these amounts were expended by complainant on

account of its interstate business, and no part of said sum
93 should be charged to the account of the intrastate business.

The defendants further allege that the expense of operating the trains of the complainant will be greatly reduced by the provisions of the act reducing passenger rates, permitting the complainant to charge a single fare, thereby rendering it unnecessary for the complainant to furnish more than one class of cars for the use of its passengers. That for many years the complainants have been insisting that they be granted this privilege, alleging that their operating expenses would thereby be greatly reduced.

(*g*)

The defendants say that they have reason to believe, and so aver, that because of the increase of population and development and of reduced rates, the business of complainant will be greatly increased, and this with a comparatively small increase in operating expenses, and that from this source the percentage of profit above mentioned will be much greater; the defendants therefore further say that it is not true, as alleged by the complainant, that its operating expenses have, since June 30, 1906, increased "relatively far more than the gross earnings, and that the net results will be even more unfavorable and yield a still smaller return to the complainant than is here shown for the year ending June 30, 1907," but on the contrary, as above stated, they say that the above net earnings will be increased to a considerable amount. The defendants, therefore, further answering the specific allegations, say that it is not true, as alleged in said paragraph 8, that there will be "no compensatory increase in the business or tonnage of this complainant resulting from the reduced rates, and that there will be no appreciable or substantial increase whatever in such business or tonnage due to such reduced
rates"; on the contrary, the general experience is, as was
94 said by the Supreme Court of the United States, that a reduction of rates will result in an increase in business.

Further answering paragraph 8 of the bill herein, the defendants are informed and believe that it is not true, as alleged, that the lines of this complainant "have at all times been operated as economically as practicable under the existing conditions, and its operating expenses have at all times, under the conditions confronting it, been as reasonably low in amount as they could be made by economical and judicious management, and it has not been possible under the existing conditions for the complainant to operate its road for less than it has been operated," and that "in all respects it has confined its operating expenses, its taxes, its interest and every other expenditure within the lowest and narrowest limit reasonably practicable under the existing conditions"; and the defendants again deny that the results of "the aforesaid rate and charges would be to deprive this complainant of its property without just compensation and to deprive it of the equal protection of the laws, and to take its property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States." The defendants further say, in support of the allegations as to the increase of

business and income of complainant, that, as appears from the reports of complainant to the Corporation Commission, the passenger earnings for the year 1906 increased over the year 1905 $156,549.34, and the freight earnings increased for the same period $654,394.82 upon its own lines, and that the freight and passenger earnings on its own and leased lines for the same period increased $831,232.59. As further illustrating the increase of the earnings of the complainant, the defendants say that it appears in the said report to
95 the Corporation Commission that the total earnings for the year 1902 upon its own and leased lines were $7,956,709.34, and total earnings for the year 1906 upon its own and leased lines were $12,020,310.16. That the per cent. of expenses to earnings for 1902 was 62.14, for 1905 was 58., for 1906 was 57.75, showing that the increase in the earnings upon its own and leased lines from 1902 to 1906 have been $4,063,600.82; that the per cent. of expenses to earnings were less than they were in 1902.

(*h*)

The defendants, further answering said paragraph, say that they do not know whether the real and legal bonded indebtedness of the complainant is as stated in the bill; and they further say that they are informed and believe that it was greatly in excess of the value of the property; and they are further informed and believe that much of the stock upon which dividends is claimed is watered, and does not represent the true value of the corporate property. They further say that the bonded indebtedness and amount of stock, etc., are merely some of the elements to be considered in determining the value of the property, and that when that value has been determined, the justness of the income is to be tested by that alone, and not by the amount of indebtedness, the interest thereon, the right to dividends upon stock, or other considerations of like character.

The defendants reiterate that upon the value of the service and of the property employed, the complainant's right to a just compensation will not be impaired by the provisions of the acts above mentioned.

(*i*)

Further answering paragraph 8 of the bill of complaint, the defendants admit the passage by the Legislature of the several acts mentioned therein. The acts in relation to the assessment of real
96 estate in stock-law territory is just and in accord with the laws of other States, as well as a just application of the rule that the burdens of government should be equally imposed upon all persons owning property, whether natural or artificial. The act prescribing the hours of service of employees engaged in the operation of trains is not only just and humane to those employed, but is necessary for the protection of the lives of the traveling public; and so far from being a burden upon the complainant, will result not only in the safety of life, but in avoiding heavy damages occasioned by overworked employees engaged in such a

dangerous and responsible occupation. The act requiring railroads to erect and maintain union depots in towns of 2,000 inhabitants is a just and reasonable response to the demand of the traveling public, and is generally required as such in all States and countries abreast with the progress of the age. It can impose but little burden upon the complainant, as some of the larger cities already have union depots, and in others, like Greensboro, High Point, Salisbury, Lexington, Concord and Asheville, the complainant has no competition, and there is no need of union stations. Outside of these cities there are very few towns on complainant's lines of 2,000 inhabitants to which the act would be applicable. The defendants deny that these acts will be oppressive or burdensome to the complainant, or materially affect its net earnings.

(6)

Answering paragraph 9 of the bill, the defendants admit that the defendant Commissioners established rates prior to March, 1907; but they deny that a reduction of the same as provided by the acts complained of would be unreasonable or unjust, and, in respect to the net earnings upon the basis of the maximums provided in said acts, they refer to paragraph 5 of this answer, showing that
97 even according to complainant's reports the net earnings would be over 9 per cent. upon the value of the property employed. The defendants also deny that "since the rates were so fixed by the Commissioners, the cost of performing the service by the complainant has largely increased, and in consequence thereof the said rates should, in order to be now just and reasonable, be increased, instead of being decreased." Defendants in this respect refer to said paragraph 5 of this answer.

(7)

The defendants, answering paragraph 10 of the bill herein, deny the same, and in respect to rates and discriminations they refer to subdivision 6, paragraph 5, of this answer.

(8)

The defendants, answering paragraph 11 of the bill herein, deny the allegations of fact contained therein, and are advised that the conclusions of law stated therein are erroneous.

(9)

Answering paragraph 12 of the bill of complaint the defendants deny that complainant's existing "rate fabric is properly adjusted in its relation between its intrastate rates and its interstate rates in North Carolina and in other States and that all of these charges, with perhaps trifling and negligible exceptions—exceptions which, if they exist, are entirely unimportant in the present connection—are just and reasonable in themselves, and do not and will not give to this complainant more than a just and reasonable return upon the

value of its property used in the transportation service which it renders to the public; and that any reduction in its revenue will seriously embarrass and obstruct it in providing, and will deprive it of its power to properly provide, the facilities which the public
98 commerce dependent upon it for transportation absolutely requires for the movement of traffic, both intra- and interstate." While the defendants admit that no State has a right to require that its own commerce between points within the State shall be given a preferential service, or shall be carried at preferential and lower rates than other commerce, yet they are advised that any State has a right to fix and prescribe just and reasonable rates for carrying intrastate freight and passengers. They are advised that the State of North Carolina is not required to submit to unjust, unreasonable, or extortionate intrastate freight and passenger rates, because the complainant is willing to impose such rates upon its citizens or citizens of other States, or because unjust, unreasonable and extortionate rates are in force in other States; and the defendants deny that the effect of the rates proposed to be put into effect pursuant to the acts of the General Assembly of North Carolina, referred to in the bill of complaint herein, will be to destroy the proper adjustment of complainant's intrastate rates in North Carolina, its intrastate rates generally and its intrastate rates in other States, and to require that preference be given to the complainant and undue discrimination exercised by it, in favor of the intrastate traffic in North Carolina over the intrastate traffic carried by the complainant in other States, and they deny that the Legislature of North Carolina has done, or that these defendants seek to do, anything to so regulate and burden intrastate commerce as to violate the commerce clause of the Constitution of the United States. And these defendants further say that the effect of the "Act in Respect to Freight Rates" and the "Act in Respect to Passenger Rates," referred to in the bill of complaint herein, will have a tendency to free the citizens of the State from and remove the discrimination as to freight and passenger rates imposed now
99 and for many years prior to this time by the complainant herein, and other common carriers acting in concert with it, upon the citizens of this State and others traveling and doing business within its borders. And these defendants say that now and since its organization the complainant has discriminated against North Carolina in both passenger and freight rates, particularly against it in the matter of freight rates, and in this manner has aided in building up the business of individuals and corporations doing business in towns and cities in the adjoining State of Virginia, under the laws of which complainant has been incorporated and organized, and also in building up and promoting the growth of towns and cities in the adjoining State of Virginia, and diverting from North Carolina business that properly belonged to this State; that as an illustration of this discrimination, these defendants say that grain may be shipped from Louisville, in the State of Kentucky, over complainant's lines through Greensboro, in this State, to Lynchburg, in the State of Virginia, for 17½ cents, while the same ship-

ment stopped at Greensboro, 114 miles nearer on complainant's line, costs the buyer or shipper 28 cents.

The rate from Bluefield, West Virginia, to Cincinnati, Ohio, a distance of 350 miles, on a ton of coal is $1.15; from Bluefield, West Virginia, to Greensboro, North Carolina, a distance of 360 miles, the rate is $2.30. The rate on freight shipments from Lynchburg, Virginia, to Louisville, Kentucky, are for the various classes of freight in their order 54 cents, 47 cents, 38 cents, 25 cents, 22 cents, and 18 cents for 100 pounds; for the same class of freight shipped from Greensboro to Louisville (a distance of 114 miles less than the distance from Lynchburg to Louisville) the rates are $1.15, 98 cents, 80 cents, 57 cents, 50 cents, and 39 cents for 100 pounds. So marked and great has been this discrimination that the manu-
100 facturers doing business in North Carolina along the line of complainant have found it necessary, in order to market their goods and compete with other manufacturers, to ship goods to other States south of North Carolina and have them reshipped over complainant's line through the State and through the points of manufacture to points in other States situated north of North Carolina; that goods manufactured in North Carolina can in some instances be shipped to New York City and then back to points in this State for less than the cost of shipment of the same goods direct from the point of manufacture to selling points in North Carolina, though the distance by way of New York is, of course, much greater; that this condition has become so intolerable and burdensome as to drive some of the citizens out of business in this State, and to compel others to leave this State and enter business elsewhere in order to secure a more favorable freight rate, while still other citizens have sought, and are still seeking, relief before the Corporation Commission of this State and before the Interstate Commerce Commission of the United States.

(10)

Answering paragraph 13 of the bill, the defendants admit the passage of the "Act in Respect to Freight Rates," but do not admit the accuracy of the complainant's summary of the same, and request that the act itself be consulted when referred to by any party to this suit. The defendants are advised that the said section 3 of said act in respect to the furnishing of cars is not a regulation of interstate commerce and does not violate "the commerce clause" of the Federal Constitution, as alleged. These defendants further say that no duties are imposed upon them in respect to their enforcement of said section.

101 (11)

Answering paragraph 14 of the bill, the defendants again admit the passage of the "Act in Respect to Freight Rates," but do not admit the accuracy of the complainant's summary of the same, and request that the act itself be consulted when referred to by any party to this suit. The defendants deny all of this paragraph except the passage of the act aforesaid. The defendants further say that no

duties are imposed upon them in respect to the enforcement of said acts.

(12)

Answering paragraph 15 of the bill, the defendants admit the passage of said act in respect to passenger rates, but for greater accuracy refer to the act as published for the provisions of section 3 thereof. These defendants are advised that the conclusions of law stated in said paragraph are erroneous, and they further say that they are informed and believe that the complainant has voluntarily entered into an agreement with other lines operating in this State to issue, and does issue, interchangeable mileage-books.

(13)

Answering paragraph 16 of the bill of complaint, the defendants deny the allegations of facts therein stated, and are advised that the conclusions of law therein stated are erroneous.

(14)

The defendants, answering paragraph 17 of the bill of complaint, deny that any special duty is imposed by the law of the State or by the two acts complained of, upon the defendants, the Attorney-General and the Assistant Attorney-General, in respect to the enforcement of said acts; and they deny that any duties are imposed
102 by said laws upon the defendant Commission in respect to the enforcement of the "Act in Respect to Freight Rates" and the "Act in Respect to Passenger Rates," other than are provided in said acts. The defendant Commissioners admit that it is their intention to discharge the duties so imposed, but deny the remainder of said paragraph, except as hereinafter admitted.

(15)

As to paragraph 18 of the bill, the defendants are unable to say what amount is involved in this suit, and demand strict proof that it is as alleged by complainant. Defendants, considering the foregoing answer, deny that any constitutional right of the complainant is involved in this suit.

(16)

Answering the 19th paragraph of the bill of complaint, the defendants deny the right of the complainant to obstruct and interfere with the execution of the aforesaid laws of the State, either by restraining order, or injunction, or in any respect whatever, and this without reference to its consent to the arrangement proposed in said paragraph as to refunding any amounts illegally charged and collected. The defendants respectfully say that said laws are valid in all respects, and that no restraint whatever should be imposed upon their instant execution.

(17)

The defendants deny paragraph 20 of the bill of complaint.

Further Answering.

(*a*)

And more particularly answering, the defendants say that no duty whatever is imposed by either of the said acts upon the defendants, the Attorney-General and the Assistant Attorney-General,
103 other than is imposed in respect to the general criminal laws of North Carolina. The said acts simply provide that their violation shall constitute a misdemeanor and be punishable by fine or imprisonment at the discretion of the Court. The only penalties prescribed by said acts are given to and suable for by the parties aggrieved. The defendants repeat that the Attorney- and Assistant Attorney-General are charged with no special duty by laws of this State in respect to the enforcement of said acts, and that the same are self-executing so far as the said defendants are concerned, and that as to them this suit is a suit against the State of North Carolina, and against its consent, and contrary to the Eleventh Amendment to the Constitution of the United States. If the complainant should be prosecuted under these statutes, it has, according to the law, as declared by the Supreme Court of the United States, an opportunity of defending on the ground that the statute is void, and the fact that it may frequently be prosecuted constitutes no ground for the interference of a Federal court of equity.

(*b*)

The defendants further say that the "Act in Respect to Passenger Rates" is not dependent in any manner, in respect to its operation, upon any act or thing which the defendant Commission may or may not do. It is positive, unconditional, and self-executing in its provisions, and its violation subjects the carrier to the indictment and the penalties above mentioned. The statute itself fixes the rate, and not the Commission, and as to such rate the said defendants have no special duty to perform in order that it may become a law, and, being thus self-executing, this suit is substantially a suit against the State of North Carolina, and against its consent, and contrary to the Eleventh Amendment to the Constitution of the United
104 States. If the complainant should be prosecuted under the said statute it can, as above stated, interpose the defense that it is void, and cannot, therefore, resort to a Federal court of equity for relief. The defendants further submit to the Court whether the same objections do not apply to the "Act in Respect to Freight Rates" so far as the fixing of maximum amounts are concerned.

And for further defense:

The defendants deny that the facts stated in the bill, and especially when considered in connection with the said reports of the complainant, make out a case authorizing or calling for the interference of a court of equity; and the defendants say that if the complainant

is ever aggrieved by the said legislation it has ample remedy at law; and defendants further say that because of the self-executing character of the acts as above set forth, and on other grounds, there is no equity in the bill of complaint herein.

Wherefore, the defendants pray that the restraining order heretofore granted be vacated, that this suit be dismissed, and that the defendants recover their costs.

FRANKLIN McNEILL,
SAMUEL L. ROGERS,
EUGENE C. BEDDINGFIELD,
ROBERT D. GILMER,
HAYDEN CLEMENT, *Defendants.*

ROBERT D. GILMER,
Attorney-General.
HAYDEN CLEMENT,
Assistant Attorney-General.

JAMES E. SHEPHERD,
F. A. WOODARD,
R. W. WINSTON,
VICTOR S. BRYANT,
WALTER E. DANIEL,
Counsel for Defendants.

105 UNITED STATES OF AMERICA, *State of North Carolina:*

Personally appeared before me, —— —— a notary public duly commissioned and qualified and acting as such for the State of North Carolina, Franklin McNeill, who, being duly sworn, deposes and says that he is Chairman of the North Carolina Corporation Commission and a defendant in the above-entitled suit; that he has read the foregoing answer and knows the contents thereof; that the facts therein stated, as of affiant's own knowledge, are true; and that the facts stated upon affiant's information and belief, he believes to be true.

—— ——.

Sworn to and subscribed before me, this — day of June, 1907.
My commission as notary expires on — day of —— 190–.
(Signed)
—— ——,
Notary Public.

106 *Plea of Defendants.*

U. S. Circuit Court. Filed Jul- 19, 1907. W. S. Hyams, Clerk.

NORTH CAROLINA, *Buncombe County, City of Asheville:*

Police Justice's Court.

STATE
vs.
J. H. WOOD and O. C. WILSON.

Plea of Defendants.

Now comes the defendants, J. H. Wood and O. C. Wilson, being brought to the bar of the Court in their own proper persons by the Sheriff of Buncombe County, North Carolina, in whose custody they are, and says, and each for himself says:

1.

That he is not guilty of the charge contained in the warrant heretofore herein issued against him.

2.

That this Court has no jurisdiction of the offense charged against him in the warrant heretofore issued herein against him.

3.

That he is so in the custody of the said Sheriff of Buncombe County, North Carolina, and held at the bar of this Court to answer to the charge contained in said warrant as aforesaid in violation of the constitution and laws of the United States, and for an act done by him in pursuance of a decree of the Circuit Court of the United States.

And he specially further pleads:—

107 *Writ of Habeas Corpus.*

U. S. Circuit Court. Filed Jul- 19, 1907. W. S. Hyams, Clerk.

No. 572, Original.

UNITED STATES OF AMERICA, *Western District of North Carolina:*

In the Matter of the Application of JAMES H. WOOD for Writ of *Habeas Corpus.*

The President of the United States of America to Thomas F. Hunter, Greeting:

We command you that you have the body of James H. Wood by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name

said James H. Wood shall be called or charged, before me at Asheville, North Carolina forthwith, to do and receive what shall then and there be considered concerning said James H. Wood, and have you then and there this writ.

Witness Honorable Melville W. Fuller, Chief Justice of the United States this the 18th day of July, 1907.

W. S. HYAMS,
Clerk United States Circuit Court,
By M. L. RORISON, *Deputy.*

[SEAL.]

In the Matter of —— ——.

Writ of Habeas Corpus.

Let the within Writ issue.

J. C. PRITCHARD,
U. S. Circuit Judge.

Received July 19, 1907 and served on the 19th day of July 1907 by delivering to T. F. Hunter, Sheriff of Buncombe Co., N. C. the original Writ, of which this is a Duplicate, together with a copy of the petition and accompanying exhibits.

J. M. MILLIKAN,
U. S. Marshal,
By R. S. RAMSEY, *D. M.*

Fees $2.00.

108 *Answer of Thomas F. Hunter, Sheriff of Buncombe County.*

Filed in This Office July 19, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Western District of North Carolina.

In the Matter of the Application of JAMES H. WOOD for Writ of *Habeas Corpus.*

Thomas F. Hunter answering the Writ of *habeas corpus* issued in the above entitled matter by the Honorable J. C. Pritchard, Circuit Judge of the United States, on the 18th day of July, 1907, says:—

That he is the Sheriff of the County of Buncombe, and holds in his custody the petitioner by virtue of a mittimus issued by the Honorable G. S. Reynolds, Police Justice of the Police Court of the City of Asheville, county of Buncombe and State of North Carolina, a copy of which is attached to the petition filed by the petitioner; that he is advised, informed and believes that it was his duty to arrest and hold the said petitioner under said process issued by the said Court aforesaid, and is advised and believes that the said commitment is regular and lawful in all respects, and not

in violation of the Constitution of North Carolina nor of the United States; that he is advised and believes that the petition of the petitioner should be denied, and that he is not entitled to any discharge from the custody of the respondent.

Your respondent conceiving that he has no discretion in the matter holds and detains the petitioner in his custody as by the said precept he is commanded to do.

Your respondent is advised and believes that the Court — pronounced sentence against the petitioner and issued the — hereinbefore mentioned had jurisdiction of the offense charged in the warrant; that his detention is not in violation of the Constitution and laws of the United States, as this respondent is advised and believes, nor is the same in violation of any decree of the Circuit
109 Court of the United States, as this respondent is advised and believes, but the arrest of the petitioner and his conviction and sentence was for a violation of an Act of the General Assembly of North Carolina, and said detention is regular and lawful.

Your respondent is advised and believes that so much of the decree of the Circuit Court of the United States as undertakes to restrain and enjoin all individuals not connected with the suit mentioned in Exhibit C. to this petition of the petitioner was *coram non judice*, and the said judgment in respect of the proceeding under which this respondent holds the petitioner is of no effect, and not enforceable, if there is such suit or decree.

Your respondent avers on information and belief that the petitioner in this cause is able to procure any bail which any court would demand, pending an appeal of this cause, and he is advised and believes that there is no reason why the petitioner should be discharged from his custody, and he asks the Court to make an order directing the Marshal to return to his custody said petitioner to the end that this respondent may fully execute the precept in his hand.

And having fully answered as fully as he is advised that it is necessary for him to do he prays that he be hence dismissed, and that he recover his costs in this behalf most unjustly incurred.

[SEAL.] MERRIMON & MERRIMON,
Attorneys for Respondent.

T. F. Hunter being duly sworn says: That he has heard read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge except as to matters and things therein alleged on information and belief and as to those he believes it to be true.

T. F. HUNTER.

Sworn to before me this July 19, 1907.

W. S. HYAMS, *Clerk*,
By M. L. RORISON, *Deputy*.

Endorsed: *In re* Jas H. Wood.

110 *Replication of Southern Railway Company.*

Filed before Judge Pritchard June 29, 1907. E. J. Best.

In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,

v.

FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, Defendants.

The Replication of the Above Named Complainant to the Joint and Separate Answer of All the Above Named Defendants.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the joint and separate answer of said defendants, for replication thereunto, sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this replicant, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct and humbly — as in and by its said bill it has already prayed.

C. B. NORTHROP,
W. B. RODMAN,
JOHN H. BUSBEE,
JOHN K. GRAVES,
Solicitors for Complainant.

ALFRED P. THOM,
Of Counsel.

Endorsed: Southern Ry. Co. *vs.* Franklin McNeill *et al.* Replication of Southern Ry. Co.

111 *Restraining Order Bond.*

Filed June 29th, 1907. H. L. Grant, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,

v.

FRANKLIN McNEILL ET ALS., Defendants.

Know all men by these presents, that Southern Railway Company, a corporation of the State of Virginia, the principal office of which is in the city of Richmond in said state, as Principal and The United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto the United States of America in the just and full sum of Three Hundred and twenty-five Thousand dollars, for the payment of which well and truly to be made, we do hereby jointly and severally bind ourselves, and each of our successors, firmly by these presents:

Sealed with our seals, and dated this 29th day of June in the year 1907.

The condition of the above obligation is such that

Whereas an interlocutory decree has been made in the above entitled cause, by the terms of which Southern Railway Company, Complainant in the said cause, and principal in this bond, is ordered to execute a bond conditioned to pay into the registry of this Court, from time to time, when and as the said Court may so order, such sum or sums of money as shall be equal to the difference between the aggregate freight and passenger rates and excess baggage charges charged and received by it, for intrastate services on its lines in the State of North Carolina, and that would have been the aggregate amount for such services at the rates fixed in or under the act of the General Assembly, ratified on the 9th day of March, 1907, entitled "An Act to prevent unjust discrimination in freight rates and to fix the maximum charges therefor"; and the act of the General Assembly of the said state ratified the second day of

112 March, in the year 1907 entitled: "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina;" and

Whereas it is ordered that the said Southern Railway Company shall preserve, to be produced whenever so ordered by the Court herein all cancelled tickets and excess baggage check stubs in respect to which such coupons or other written or printed evidence may have been issued and may be outstanding, and shall from time to time, report to the Court at intervals to be fixed by the order of the court herein, statements showing the revenue by it charged and collected for its services in the North Carolina interstate transportation of passengers and baggage and freight in excess of the amounts permitted by said act, in respect to passenger rates, and said act in

respect to freight rates, and as to each of said shipments or freight to report the name of the shipper, the date and place of shipment, and the amount of such excess; and

Whereas it is ordered that from time to time the said Southern Railway Company shall give such further bond or bonds as the Court may require, to secure the proper payment into the registry of the court, of all amounts which finally it shall be adjudged that it should so pay under the final decision in this cause:

Now, therefore, if the above named Southern Railway Company shall well and truly comply with each and every one of the above requirements of the said interlocutory decree and such other decree or decrees as this court may enter in this cause, and if the said Southern Railway Company shall pay, or cause to be paid, all damages caused by the issue of said interlocutory injunction and the costs of this cause in connection therewith, in the event that the said interlocutory injunction shall be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, then this obligation to be null and void otherwise to be and remain in full force and effect.

In testimony whereof the parties hereto have caused these presents to be duly signed in their respective names and their respective seals to be hereunto affixed, this 29th day of June in the year 1907.

113 [Southern Railway Company Seal.]

SOUTHERN RAILWAY COMPANY,
By A. B. ANDREWS, *1st Vice President.*

[SEAL.] THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By ALFRED S. BARNARD,
Ag't & Att'y in Fact,
By PHILIP R. MOALE,
Agent and Attorney in Fact.
Attorney in Fact.

Approved,
H. L. GRANT, *Clerk.*
By GEO. L. TONNOFFSKI, *D. C.*

Endorsed on back: 295. Equity. Southern Railway Company *vs.* Franklin McNeill *et al.* Restraining Order Bond. Filed June 29th, 1907, H. L. Grant, Clerk.

114 *Decree Continuing Restraining Order & Appointing Standing Master.*

Filed June 29th, 1907. H. L. Brant, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,

v.

FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, Defendants.

Before Honorable J. C. Pritchard, Judge of said Court.

In pursuance of the order to show cause, made herein on the eighth day of May 1907, by which the said defendants were ordered to appear in the United States Court room at Asheville, North Carolina, at ten o'clock A. M. on Wednesday, the twenty-sixth day of June, 1907, to show cause, if any they had or could show, why an injunction *pendente lite*, as prayed in the bill, should not be issued, the defendants appeared in the said Court room at the time mentioned and filed their answer in writing to the said bill, and thereupon the complainant moved before the Judge of this Court for an interlocutory injunction as prayed in the said bill, and the said motion was heard upon the bill of complaint in this cause, and answer thereto, treated as affidavits, and upon the affidavits filed herein by the complainant, and the said motion was argued by counsel.

And the same having been fully considered, it is now ordered:

1. That until the further order of the Court herein, the defendants, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their agents and employees, be, and they hereby are, enjoined and restrained from preparing or publishing the tariff of rates, charges and tolls mentioned in the fifth section of the act in the bill in this cause mentioned, entitled

"An Act to prevent unjust discrimination in freight rates
115 and to fix the maximum charges therefor," ratified March ninth, 1907, and hereinafter referred to as the "Act in respect to freight rates," and for classifying the railroads operating in North Carolina in accordance with, and from publishing the rates fixed by, an act of the General Assembly of North Carolina in the bill in this cause mentioned, entitled "An Act prescribing the maximum charges railroad Companies may make for transporting passengers in North Carolina, ratified March second, 1907, and hereinafter referred to as the "Act in respect to passenger rates," and from naming and designating the ticket offices in North Carolina at

which mileage books good on a line of this complainant shall be kept on sale.

2. That until the further order of the court herein, the defendants Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their attorneys, agents and employees, and the defendants Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, their and each of their successors in office, and their and each of their attorneys, agents and employees are, and each of them is, hereby restrained and enjoined from taking any step or steps in pursuance of said act in respect to freight rates, or of said Act in respect to passenger rates, or of any of the laws of the State of North Carolina, either directly, or by or through any other attorney, agent or employee or otherwise, or by any suit, prosecution or proceeding, civil or criminal, or in any other manner for the purpose of enforcing or endeavoring to put into effect as against the complainant or any of its officers, agents or employees, or to force the complainant, or any of its officers, agents or employees, to put into effect, said Act in respect to freight rates, or the said Act in respect to passenger rates, or any part of either of said acts, or the penalties prescribed or provided for, in either of said acts, or any other penalties or punishments
116 against the Complainant, Southern Railway Company, or against any of its officers, agents or employees for failure to put into effect, or to observe, on any of the lines of the said complainant in North Carolina the freight rates, or the passenger rates, prescribed or provided for, in said acts, or either of them, or for failure to comply with either of said acts, or with any provision of either of them.

3. That, until the further order of the Court herein, all other individuals and corporations are, and each of them is, hereby restrained and enjoined from instituting, or prosecuting, any suit or prosecution or other proceeding, either civil or criminal, against said complainant, or against any officer, agent or employee of said complainant for the recovery or imposition of any penalty or punishment, under or by virtue of said Act in respect to passenger rates, or the said act in respect to freight rates, or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of the said Complainant or any of its officers, agents or employees, to put into effect, or to observe, on any of the lines of the complainant in North Carolina the freight rates or the passenger rates prescribed in said acts, or in either of them, or to comply with any of the provisions of either of said acts, or for the recovery of any damages or overcharges because of, or growing out of any such failure, or for the enforcement of any claim, alleged right or cause of action, growing out of or connected with, any such failure.

4. That said complainant, or some one for it, shall before a judge of this Court, or the clerk thereof, execute a bond in the penalty of three hundred and twenty five Thousand dollars, with surety to be

approved by such judge, or by such clerk, conditioned to pay into the registry of this court, from time to time, when and as the court may so order such sum or sums of money as shall be equal to the difference between the aggregate freight and passenger rates and excess baggage charges charged and received by it for intrastate services on its lines in the State of North Carolina, and what would have been the aggregate amount for such services at the rates fixed in or under the said Acts of Assembly, and further conditioned
117 that, whereas an interlocutory injunction has been issued in the above entitled cause, by the terms of which the defendants, and each of them, are restrained until the further order of the court, as from said order will appear, now should such interlocutory injunction be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, then that the complainant shall pay, or cause to be paid, all damages caused by the issue of such interlocutory injunction and the costs of this cause in connection therewith.

5. That the complainant shall give to any person purchasing a ticket for intrastate travel on its lines in the State of North Carolina, and to any person purchasing a mileage book for travel on its lines in North Carolina, but not good outside of said State, a transferable coupon, or other written or printed evidence, representing the sum which such person, or his transferee, will, upon a final decision in this cause upholding the validity of the said act in respect to passenger rates, be entitled to receive, out of the cash deposit to be made, in the registry of this Court in pursuance of the obligation of the bond hereinbefore mentioned. The form of said coupon, or of other written or printed evidence, shall be substantially as follows:

SOUTHERN RAILWAY COMPANY.

"North Carolina Ticket Claim Coupon.

"To be Retained by Passenger. Not Good for Passage.

"Issued under an order of the Circuit Court of the United States for the Eastern District of North Carolina, in a suit therein pending between the Southern Railway Company, Complainant, and Franklin McNeill, *et al.* Defendants.

"Southern Railway Company has, on the date stamped hereon received in connection with the sale of the ticket of corresponding form and number, the rate designated in the tariff of this Company in effect on date of sale, for travel between points designated in such ticket within the State of North Carolina to which ticket this coupon is attached. This coupon is evidence only of a claim for the difference between the amount received and what would have been the amount if the distance covered by said ticket had been paid for at the rate fixed by North Carolina Act, approved March 2d, 1907, prescribing maximum passenger charges, and is payable only on the order and out of the registry of said court, upon surrender to the court of this coupon, and upon such conditions, if any, at said court

may impose, provided it should be finally determined in said suit that the said claim is entitled to such payment.

"In case the ticket with which this coupon corresponds is presented for redemption it must be presented at General Passenger Agent's office Washington, D. C. accompanied by this coupon, either for surrender or for appropriate notation."

118 And the complainant shall give to any person checking baggage to be carried by the complainant between two points, both of which are in the State of North Carolina, and which does not pass out of the State en route, and who has paid to the complainant any charge thereon for excess baggage a transferable coupon or other written or printed evidence representing the difference between the amount so paid and what would have been paid if there had been an allowance to such person of two hundred pounds of baggage as provided in said Act in respect to passenger rates, such difference to be payable to such person or to his transferee upon a final decision of this cause upholding the validity of such act in respect to passenger rates, out of the cash to be deposited in the registry of this Court, in pursuance of the obligation of the bond hereinbefore mentioned, such coupon, or other written or printed evidence shall be substantially in the following form:

SOUTHERN RAILWAY COMPANY.

Issued by Southern Railway Company.

"*North Carolina Excess Baggage Check.*

North Carolina Excess Baggage Claim Coupon.

To be Retained by Passenger.

"Issued under an order of the Circuit Court of the United States for the Eastern District of North Carolina, in a suit therein pending between Southern Railway Company, Complainant, and Franklin McNeill *et al.*, defendants.

"Southern Railway Company has received in connection with the issuance of excess baggage check of corresponding form and number, the amount computed from the excess baggage tariff of this Company in effect on July 1, 1907, for the transportation of the passenger's baggage in excess of 150 pounds in weight, between the points designated in such excess baggage check within the State of North Carolina, to which excess baggage check this coupon is attached.

"This coupon is evidence only of a claim for the difference between the amount received, and what would have been received had there been an allowance to the passenger of 200 pounds of baggage, as provided in the North Carolina Act, approved March 2, 1907; and is payable only on the order and out of the registry of said court, upon surrender to the Court of this coupon, and upon such conditions, if any, as said Court may impose, provided it should be finally determined in said suit that the said claim is entitled to such payment."

But nothing herein contained shall be construed as requiring the complainant to issue any such coupon, or any such other written or printed evidence, in connection with the sale of any mileage book or any ticket, good for an interstate passage or for passage in another State or in other states.

119 6. That the complainant shall preserve to be produced whenever so ordered by the Court herein all canceled tickets and excess baggage check stubs in respect to which such coupons or other written or printed evidence may have been issued, and may be outstanding, and shall from time to time report to the court at intervals to be fixed by an order of the Court herein, statements showing the revenue by it charged and collected for its services in the North Carolina intrastate transportation of passengers, baggage and freight in excess of the amounts permitted by said Act in respect to passenger rates, and said Act in respect to freight rates. As to each of such shipments of freight the complainant shall report the name of the shipper, the date and place of shipment and the amount of such excess. The complainant shall from time to time give such further bond or bonds as the court may require to secure the proper payment into the registry of the court of all the amounts which finally it shall be adjudged that it should pay, under the final decision of this cause.

7. If it shall be determined herein that the complainant is entitled to the amounts covered by said bond or bonds, then said bond or bonds, shall be released and canceled by the court, and if any amount shall have then been paid into the registry of the court pursuant thereto, then upon such determination in favor of the complainant, the sum or sums, so paid into the registry shall be repaid to the complainant without further order of the court herein.

8. Leave is hereby granted to the complainant, if it be so advised, to make the supplemental process, as new parties defendant, any person or corporation, attorney or solicitor, who may attempt or threaten to assert, or enforce against the complainant or against any of its officers, agents or employees, any alleged right, remedy, penalty or punishment, under either of said acts or otherwise, because of the failure of the complainant, or any of its officers, agents or employees, to put into effect, or to observe, any rate prescribed in said Act in respect to passenger rates, or in said Act in respect to freight rates, or any other provision of said acts, or either of them.

120 9. That the restraining order heretofore granted in this cause shall be construed as remaining in full force and effect until this interlocutory injunction shall take effect.

10. It is further ordered that a writ of injunction shall forthwith issue in accordance with this order.

11. The defendants, having by counsel in open court stated that they regard the answer filed on the said motion for an interlocutory injunction as their answer in this cause, and having given their consent that the same shall be so considered, and that the complainants shall forthwith file a replication thereto, and that the said cause shall be considered at issue, it is now ordered that it be referred to the Honorable W. A. Montgomery, Standing Master of this Court for the

Eastern District of North Carolina, to take and to the Court report such evidence on any of the issues herein as either party may offer, and to make all needed computations, and report fully to the court the facts thereon; that for that purpose the master shall have the right to sit from time to time in the City of Washington and at any point he may elect in the State of North Carolina or elsewhere, for the purpose of facilitating the taking of the said evidence, and the said hearing before him, and that he shall report to the court the said evidence and his findings thereon not later than the 25th day of September, 1907. The said Master shall determine what time is to be allotted to the complainant for the taking of its evidence and what time shall be allotted to the defendants for the taking of their evidence.

This cause, by consent of the parties hereto given in open court is set down for hearing before this Court in the City of Asheville on the first Monday of October in the year 1907.

12. Thereupon the complainant tendered its bond to comply with the provisions in respect to a bond in this order duly executed by the complainant as principal, and by the United States Fidelity & Guaranty Company as surety, which said bond and the execution thereof and the surety thereto are approved.

June 29th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

Endorsed: 295. Southern Railway Company *vs.* Franklin McNeill *et al.* Decree continuing restraining order and appointing standing master.

121 *Bond of Jas. H. Wood.*

U. S. Circuit Court. Filed Jul- 19, 1907. W. S. Hyams, Clerk.

UNITED STATES OF AMERICA, *Western District of North Carolina:*

Know all Men by these Presents, That we James H. Wood as Principal, and J. F. Hays as Sureties, are held and firmly bound unto the United States of America in the sum of Two Hundred ($200.00) Dollars, lawful money of the United States, to the payment whereof well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed with our seals, and dated at Asheville, N. C., this 19th day of July one thousand nine hundred and seven.

The condition of the foregoing obligation is such:

That if the above bounden James H. Wood shall make his personal appearance from day to day before His Honor, J. C. Pritchard, Circuit Judge at the Federal Court House at Asheville until the further order of the Court and not depart this Court without leave, then this obligation to be null and void; otherwise to remain in full force and effect.

JAMES H. WOOD, [SEAL.]
J. F. HAYS. [SEAL.]

Taken and acknowledged before me this 19 day of July A. D. 1907.

W. S. HYAMS,
Clerk U. S. District Court,
By M. L. RORISON, *Deputy.*

Justified.

Endorsed on back as follows to-wit: Oral Justification. No. 270 United States of America, Western District of North Carolina, J. H. Wood, Petitioner against Thomas Hunter, Buncombe County. Bond for Appearance, — term 190– At Asheville, N. C. Penalty $—.

122 EXHIBIT E.

Original.

No. 568.

In the Circuit Court of the United States for the Western District of North Carolina, to-wit:

In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, J. A. SPENCE, ELIJAH MOFFITT, J. R. MCKENZIE, E. B. HATCH, W. C. HURLEY, F. A. HENLEY, W. M. HOOKER, CHAS. A. ARMSTRONG, L. F. NANCE, SPENCER HOWELL, ROBERT HOWELL, COON HOWELL, HENRY SMITHERMAN, JESSE ELDRIDGE, CLAUDE HOWELL, WALLACE ARMSTRONG, GUY SMITHERMAN, The Last Four Being Infants under the Age of Twenty-one Years, and J. M. WAY and B. C. BECKWITH, Defendants.

Ancillary Bill.

Moore & Rollins, F. H. Busbee, W. B. Rodman, John K Graves, Solicitors for Complainant.

Francis Lynde Stetson, Alex. P. Humphrey, Walker D. Hines, Alfred P. Thom, Of Counsel.

Office of U. S. Marshal, Raleigh, N. C. Jul- 20, 1907. U. S. Circuit Court. Filed Jul- 23, 1907. W. S. Hyams, Clerk.

123 In the Circuit Court of the United States for the Western District of North Carolina, to-wit:

In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, J. A. SPENCE, ELIJAH MOFFITT, J. R. MCKENZIE, E. B. HATCH, W. C. HURLEY, F. A. HENLEY, W. M. HOOKER, CHAS. A. ARMSTRONG, L. F. NANCE, SPENCER HOWELL, ROBERT HOWELL, COON HOWELL, HENRY SMITHERMAN, JESSE ELDRIDGE, CLAUDE HOWELL, WALLACE ARMSTRONG, GUY SMITHERMAN, The Last Four Being Infants under the Age of Twenty-one Years, and J. M. WAY and B. C. BECKWITH, Defendants.

To the Honorable Judges of said Court:

The ancillary bill of complaint of Southern Railway Company, a corporation of the State of Virginia, duly organized and existing under and by virtue of the laws of the said State, having its principal office in the city of Richmond in the State of Virginia, and being a citizen of the said State, against Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, and Hayden Clement, J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, the last four being infants under the age of twenty-one years, and J. M. Way and B. C. Beckwith, all of the defendants being citizens of the State of North Caro-
124 lina, and the defendants Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, Hayden Clement and B. C. Beckwith being residents of the Eastern District, and J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, the last four being infants under the age of twenty-one years, and J. M. Way, being residents of the Western District of the said State of North Carolina.

And thereupon your complainant says:

1. The citizenship of the parties complainant and defendant is as above set forth.

2. That on the 8th day of May, 1907, your complainant filed in the Circuit Court of the United States for the Eastern District of North Carolina, an original bill of complaint wherein the Southern Railway Company was complainant and Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer and Hayden Clement were defendants, which said bill was in the words and figures as follows, to-wit:

125 In the Circuit Court of the United States for the Eastern District of North Carolina, to-wit:

In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, Defendants.

To the Honorable Judges of said Court:

The bill of complaint of Southern Railway Company, a corporation of the State of Virginia, duly organized and existing under and by virtue of the laws of that State, having its principal office in the city of Richmond, in the State of Virginia, and being a citizen of said State, against Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, and Hayden Clement, defendants, all of said defendants being citizens of the State of North Carolina.

And thereupon your complainant says:

1. The citizenship of the parties complainant and defendant is as above set forth.

2. That in the year 1894, under an act of the General Assembly of the State of Virginia, approved February 20, 1894, entitled "An Act authorizing the purchasers of the Richmond and Danville Railroad, their assigns and successors, to become and be a corporation, to adopt a name therefor, and to possess and exercise general power; and authorizing the leasing to or by, and the consolidation therewith of, other corporations," the complainant was duly incor-
126 porated and organized into a railroad corporation. A true copy of its said charter is herewith filed as a part of this bill, marked Exhibit No. 1.

3. That by the terms of its charter it was authorized to own, operate and control lines of railroad in other States as well as in Virginia, and under and by virtue of such powers, and under and by virtue of due authority from the States about to be mentioned, the complainant owns, or controls and operates, and continuously since its said organization has operated and controlled, lines of railroad (in addition to those which it owns, operates and controls in the State of Virginia) in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Indiana and Illinois. That portion of its road lying in the State of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi and Tennessee comprises lines 6989.12 miles in length and constitutes a continuous system of railroads, and that portion of its lines lying in the States of Kentucky, Indiana and Illinois comprises lines 526.73 miles in length and constitutes another continuous system of railroads. These two systems are not connected by rails owned by this complainant, but are connected

by traffic arrangement with another line of road. That portion of its road which it so owns, or controls and operates, in the State of North Carolina is 1,456.72 miles in length, and for a considerable number of years has been more than 1,400 miles.

4. That the complainant is, and continuously since its organization aforesaid has been, engaged in doing an intrastate business as a common carrier of freight and passengers in the State of North Carolina, and in addition is, and continuously since its said organization has been, engaged in doing, as a common carrier of freight and passengers, a large interstate business in said State of North Carolina, and in and between said State and the other States aforesaid, and other States of the United States, and in and between other States and Territories of the United States, and also is, and since its said organization has been, engaged in said State and the other States aforesaid in foreign commerce.

5. That at its session held in the year 1907, and just ended, the General Assembly of North Carolina passed an act entitled "An Act to prevent unjust discrimination in freight rates and to fix maximum charges therefor." The said act was ratified on the ninth day of March, 1907, and is hereinafter referred to as the "Act in respect to Freight Rates." The said act is as follows:

127 An Act to prevent unjust discrimination in freight rates and to fix the maximum charges therefor.

The General Assembly of North Carolina do enact:

SECTION 1. That the Corporation Commission, created by the laws of North Carolina, shall not, in fixing the maximum rates and charges, or tariff or rates or charges for any common carrier transporting freight in North Carolina, permit or allow any such common carrier to charge, collect or receive a greater toll, charge or rate for the transportation of any article of freight or commodity embraced in the present classification fixed and prescribed, or approved by said Corporation Commission where the initial point of shipment is on the road or line of one common carrier in this state and the terminal point of said shipment is on the line or road of another common carrier in this state, than is the sum of the present local rates now established, prescribed or approved by said Corporation Commission, less a reduction of twenty-five per centum of the said local rates on all railroads for which there is now made or prescribed a reduction for a joint haul; and on those railroads for which there is not now prescribed a reduction on joint hauls a reduction of fifteen per centum of the local rates now established, prescribed or approved by said Corporation Commission for said railroads; Provided that those railroads of this class whose rates are lower than the Corporation Commission's standard of freight rates may be permitted by said commission to adopt the standard rates prescribed by said commission; Provided that the Corporation Commission is hereby empowered to reduce the said local rates whenever in its opinion and after investigation by it it shall determine that a lower rate is reasonable: Provided, further, That present local rates now

established, prescribed or approved by said Corporation Commission shall not be increased by classification or otherwise.

SECTION 2. That any railroad company doing business in the State of North Carolina, or officer or agent thereof, who shall give to any person or shipper any advantage over another person or shipper under like circumstances by way of any rebate or reduced rate not authorized by law, or by the North Carolina Corporation Commission, or which shall make charges for shipments of freight in violation of the provisions of this act, or shall wilfully discriminate in the matter of service in favor of one person or corporation against another under like circumstances, shall be guilty of a misdemeanor, and such corporation shall, upon conviction, be fined not less than one hundred dollars, and such officer or agent shall be fined or imprisoned or both, in the discretion of the court; and any shipper or consignee of any freight in the State of North Carolina who shall knowingly accept any rebate or other consideration or service
128 from any railroad company which is not allowed or given other shippers or consignees under like or similar circumstances, and which is not allowed by law, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.

SECTION 3. That whenever any person, firm or corporation intending to ship freight makes a written application to any railroad company for a car or cars to be loaded in carload lots with any kind of freight embraced in the tariffs of said company, stating in said application the character of the freight, the number of cars wanted, the station, depot siding, wharf or boat landing on the road or line of said railroad company whence the shipment is to be moved, and its final destination, the railroad company shall furnish the said car or cars within four days from seven o'clock a. m. the day following such application, which said application shall be delivered to the agent of the railroad company at the station at or nearest the point of shipment. Any railroad company failing to furnish the car or cars named in said written application shall be subject to a penalty of five dollars per car per day for each car not furnished, to be recovered by the person, firm or corporation making said application: Provided that the said railroad company before furnishing the car or cars upon said application of the shipper may require the person, firm or corporation applying for the same to deposit five dollars for each car so demanded at the time the application is made, which said deposit of five dollars for each car may be retained by the said railroad company as a forfeit for trackage, in case the car or cars are not loaded within forty-eight hours after notice of the placing of said car or cars in accordance with said demand: Provided that the Corporation Commission may excuse from the penalties imposed by this section independent lines not owned, operated or controlled by any other line or system when trackage is less than one hundred miles.

SECTION 4. That section two thousand six hundred and thirty-two of the Revisal of one thousand nine hundred and five of North Carolina be, and the same is hereby amended as follows: By striking out the words "twenty-five" in line eleven of said act and inserting

in lieu thereof the word "fifteen," and by striking out the word "five," the last word in said line, and inserting in lieu thereof the word "two," and by further striking out the words "twelve and fifty one-hundredth-" in lines fourteen and fifteen thereof and inserting in lieu thereof the word "ten," and by further striking out the words "two and fifty one-hundredths" in line fifteen and inserting in lieu thereof the word "one."

That this section four shall not apply to existing causes of action.

SECTION 5. The Corporation Commission is hereby directed to prepare and publish the tariff of rates, charges and tolls to be charged and collected by railroad companies in this State, as au-
129 thorized by this act, on or before July the first, one thousand nine hundred and seven.

SECTION 6. This act shall be in force from and after July the first, one thousand nine hundred and seven.

In the General Assembly read three times and ratified this the 9th day of March, 1907.

That the General Assembly of North Carolina, at its said session, also passed an act entitled "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," which was ratified on the 2d day of March in the year 1907, and is hereinafter referred to as the "Act in respect to Passenger Rates." Said act is as follows:

An act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina.

The General Assembly of North Carolina do enact:

SECTION 1. That no railroad company doing business as a common carrier of passengers in the State of North Carolina, except as hereinafter provided, shall charge, demand or receive for transporting any passenger, and his or her baggage not exceeding in weight two hundred pounds, from any station on its railroad in North Carolina to any other station on its said road in North Carolina, a rate in excess of two and one-quarter cents per mile, and for transporting children twelve years of age or under, one-half of the rate above described: Provided that the Corporation Commission of North Carolina is hereby authorized and empowered to permit all independently owned and operated railroad companies in North Carolina, whose mileage of road in said State is sixty miles or under, to charge a rate for transporting passengers not in excess of the present rate fixed and prescribed for said road; and also to permit all railroads constructed within the twelve months preceding the first day of January, nineteen hundred and seven, or at that time in course of construction, for a term of two years from and after July 1st, 1907, and also such railroads as may be constructed within two years from January 1, 1907, to charge such rate in excess of the rate above prescribed as the said Commission may determine to be reasonable. A charge of ten cents may be added to the fare of any passenger when the same is paid upon the cars, if a ticket might have been procured

within a reasonable time before the departure of the train; and no railroad company shall be required to accept a single fare for less than five cents.

SECTION 2. In the case that any railroad company operating as a common carrier of passengers in the State of North Carolina is owned, controlled or operated by lease or other agreement by any other railroad company doing business in this State the rate for carrying passengers thereon as prescribed in this act shall be determined for said railroad by the rate prescribed by this act for the railroad company which owns, controls or operates the same; and the North Carolina Corporation Commission shall publish the rates fixed by this act for the several railroad companies operating in this State, on or before the first of June, 1907.

SECTION 3. That mileage books of one thousand miles in each book shall be kept on sale at such railroad ticket offices in North Carolina as shall be named and designated by the Corporation Commission of North Carolina, and when such mileage book is purchased it shall be good in the hands of any person or persons named therein on all railroads on which the fare is the same as or less than the fare on the road of the company selling such mileage book; and when the mileage is detached from said book by any other railroad company than the one which sold it, the said mileage shall be redeemable on demand by the railroad company which sold it.

SECTION 4. That any railroad company violating any provision of this act shall be liable to a penalty of five hundred dollars for each violation, payable to the person aggrieved by such violation, and recoverable in an action to be instituted in the name of said person in any court of this State having competent jurisdiction thereof. And any agent, servant, or employé of any railroad company violating this act shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the Court.

SECTION 5. That any person or persons, except those permitted by law, who accept free transportation shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the Court.

SECTION 6. That section 2618 of the Revisal of 1905 is hereby repealed, and all laws and clauses of laws in conflict with this act are hereby repealed.

SECTION 7. That this act shall be in force from and after July 1st, 1907.

6. At its session held in the year 1899 the General Assembly of North Carolina passed an act entitled "An Act to establish the North Carolina Corporation Commission." Said act has been since amended and as amended provides for the election of three commissioners who shall be known as the North Carolina Corporation Commission, and that each of said commissioners shall take an oath to support the constitution and laws of the state of North Carolina and to well and faithfully execute the duties of his office as a member

of the North Carolina Corporation Commission. Said act, as
131 so amended, further provides that said commissioners shall have such general control and supervision of all railroad companies or corporations engaged in the carrying of freight or passengers necessary to carry into effect the provisions of said act and shall have full power to obtain the information necessary for carrying into effect, and otherwise enforcing, the provisions of said act. Said act, as so amended, further provides that if any railroad doing business in the state of North Carolina, or if any such company organized under the laws of any other state and doing business in the state of North Carolina shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, such railroad or company shall be deemed guilty of extortion and upon conviction thereof shall be fined not less than five hundred dollars nor more than five thousand dollars. Said act, as so amended, further provides that any railroad or corporation which violates any of the provisions of said act, or refuses to conform to, or obey, any rule, order or regulation of said commission shall in addition to the other penalties prescribed in said act forfeit and pay the sum of five hundred dollars for each offense to be recovered in an action to be instituted in the Superior Court of Wake county in the name of the state of North Carolina on the relation of the North Carolina corporation commission, and that each day such company, or corporation, continues to violate any provision of said act or continues to refuse to obey or perform any rule, order or regulation prescribed by said North Carolina Corporation Commission shall be a separate offense. Said act, as so amended, further provides that said corporation commission whenever in its judgment any corporation has violated or neglected in any respect to comply with the provisions of any law of the state, shall give notice thereof in writing to such corporations, and, if the violation or neglect is continued after such notice, shall forthwith present the facts to the attorney general who shall take such proceedings thereon as he may deem expedient. By the laws of North Carolina the Assistant Attorney General is invested with the same powers, and is required to perform the same duties, as the Attorney General, among them being the powers and duties just mentioned as appertaining to the Attorney General.

7. That the above mentioned defendants, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constitute the Corporation Commission of the State of North Carolina, the said Franklin McNeill being Chairman, and the said Samuel L. Rogers and Eugene C. Beddingfield being associate members, thereof, and that
132 the defendant Robert D. Gilmer is the Attorney General of the State of North Carolina and the defendant Hayden Clement is the Assistant Attorney General of said State; and all of said defendants have their offices in the city of Raleigh in the State of North Carolina, and the defendants Franklin McNeill, Eugene C. Beddingfield and Robert D. Gilmer are inhabitants of, and reside in, the Eastern District of North Carolina.

8. That the effect of said "Act in respect to Freight Rates" and of

the said "Act in respect to Passenger Rates," whether taken separately or together, if enforced, would, as will appear from the considerations now about to be set forth, be to deprive the complainant of its property without just compensation, and without due process of law, and to deny to it the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which the complainant respectfully sets up and claims.

The existing rates and charges in effect upon this complainant's lines in the State of North Carolina, and applicable to intrastate business in said State, are not higher than is just and reasonable, whether considered in respect to the value of the property used in the public intrastate service in said State, or in respect to the value of the service rendered to the shippers or to the travelers upon its lines. These rates and charges now in use on complainant's lines in North Carolina are, in respect to the traffic covered by the said "Act in respect to Freight Rates," the sum of the present local rates, now established, prescribed or approved by the said Corporation Commission, less a reduction of fifteen per cent. of the said local rates, and, in respect to passenger traffic covered by the said "Act in respect to Passenger Rates" are the rates and charges now established, prescribed and approved by the said Corporation Commission, namely, three and one fourth cents per mile for first class fare, and two and three fourths cents per mile for second class fare.

The complainant further shows that the effect of the said "Act in respect to Freight Rates," and of the said "Act in respect to Passenger Rates," now proposed to be put into effect, upon the business of this complainant between points both of which are in the State of North Carolina, and which does not pass out of said State en route, for the year ending June 30, 1906, is as follows:

133 The maximum actual net earnings from North Carolina intrastate business for said year, after deducting the proper proportion of improvements and betterments not capitalized, and the proper proportion of taxes, were	$324,754.64
Whereas under the proposed rates and charges in North Carolina, such maximum net earnings on the business of the same year would have been.....	28,007.47
Showing a reduction of such actual net earnings from North Carolina intrastate business for said year under the proposed rates and charges of at least....	$296,747.17

The foregoing maximum actual net earnings are arrived at as follows:

The maximum earnings from intrastate traffic in North Carolina, after paying the cost of operation for said year amounted to		$453,811.41
The ratio of the intrastate gross traffic revenue in North Carolina for said year to the entire gross traffic revenue of the North Carolina lines of this complainant covering both inter and intra state traffic in North Carolina for said year, is	27.60%	
27.60% of the gross taxes ($269,651.18) paid in North Carolina by complainant in said year, is	$74,423.73	
27.60% of the improvements and betterments, not capitalized, chargeable to complainant's North Carolina properties during said year ($197,945.81), is	54,633.04	
Total taxes and improvements and betterments so chargeable against intrastate traffic		$129,056.77
Leaving maximum net intrastate earnings as above mentioned, after deducting the said proportion of taxes, improvements and betterments		$324,754.64

The complainant further shows that the effect of the establishment of the proposed rates and charges would not be limited to the intra-state business in North Carolina of this complainant but would inevitably affect the interstate business of this complainant
134 and impair and diminish the revenue derived therefrom. This inevitably follows from the fact that many of its interstate rates on freight, and all, or nearly all, of its interstate rates for passengers, are made, and necessarily made, on a combination of locals, or by the use of locals as factors, and, where the local rate within the State of North Carolina is reduced, the inevitable effect upon the revenues of this complainant from its interstate business would be a reduction, and accordingly the total loss which this complainant would have to incur, in the event that the proposed rates and charges are made effective, would not be represented simply by the figures above given but a very considerable and appreciable loss would necessarily be added thereto, growing out of the reductions on its interstate business, as aforesaid.

In addition to this, the General Assembly of North Carolina, at its session of 1907, passed and enacted various other public statutes, the direct, immediate, and necessary effect of which will be to greatly increase the cost of the complainant's operations in that State, the titles of which said acts are as follows, namely:

"An Act to provide for the assessment of real estate of railroad companies in stock law territory for local benefit," ratified on the eighth day of March, 1907.

The effect of this act will be to impose a new and additional tax upon complainant's properties in North Carolina.

"An Act to prescribe the hours of service of employees of railroad

companies engaged in the operation of trains," ratified on the eighth day of March, 1907.

The effect of this act will be to largely increase the cost of labor in complainant's intrastate operations in North Carolina.

"An Act to authorize the Corporation Commission to require railroads to erect and maintain union depots in towns of two thousand inhabitants," ratified on the eleventh day of March, 1907.

The effect of this act will be to impose large pecuniary burdens on the complainant in North Carolina.

"An Act to extend and enlarge the powers of the Corporation Commission," ratified on the eleventh day of March, 1907.

True copies of said acts are herewith filed as a part of this bill, marked Exhibits Nos. 2, 3, 4, and 5, respectively.

The complainant further shows that there is, in respect to this complainant's property, as in respect to all other classes of property in the State of North Carolina, whether owned by individuals or corporations, a difference between the commercial and the tax assessment value, the commercial value being, in respect to all classes of property, greater than the value assessed for purposes of taxation,
135 and, while this complainant does not admit, and, in fact, expressly denies, that the tax value assessment is as great as the value which ought to be considered for the purpose of determining its right to make reasonable earnings out of, and reasonable returns on, the property used by it in doing its business as a common carrier, and performing the public service required of it, as such, the complainant is advised that the State of North Carolina, having made the assessment for the purpose of taxation upon the complainant's property in said State, cannot deny that its property in that State is worth at least the amount of said assessment, and, in fact, its property in North Carolina is worth more than the amount of said assessment and it would cost more to reproduce it. If, however, the earnings which it can make under the proposed rates and charges are estimated only in reference to the said assessed value of its said property made by the State of North Carolina for the purposes of taxation, the complainant avers that the proposed rates and charges will not permit it to earn reasonable profits, and enjoy reasonable returns, even upon that valuation, and such rates and charges will deprive it of the legitimate use of its property.

The ad valorem assessment upon the properties of the complainant in North Carolina during the year ending June 30, 1906, made by the State of North Carolina was.....	$26,134,865.00
Taking the proportion of this valuation which is used for the purpose of producing revenue from intrastate traffic in North Carolina, in the ratio which the gross intrastate traffic revenue in North Carolina bears to the total gross traffic revenue in the State of North Carolina, which is the proper proportion for such purpose, and is 27.60 per cent., the value of the property used in North Carolina for intrastate purposes, on the basis of North Carolina's assessment for purposes of taxation, is shown to be.....	7,213,222.74

Even upon this valuation, the net earnings permitted to this complainant under the proposed rates and charges from its intrastate business in the State of North Carolina would, for the year ending June 30, 1906, only amount to thirty-nine one-hundredths of one per cent. on the said tax value, before allowing anything for payment of interest on its bonds or dividends on its stock. Such returns are not as much as a reasonable profit upon the invested capital, or upon the actual value of the property used.

136 The complainant further shows that the total bonded indebtedness of this complainant applicable to its North Carolina property on the basis of setting out to North Carolina all of such indebtedness that is specially a lien upon North Carolina properties, and a lien upon no other properties, and taking the North Carolina mileage proportion of the general bonded indebtedness of the complainant, is..... $24,623,078.29

On which the annual interest charge which complainant is obliged to pay is..... 714,103.08

And that the annual trackage and rentals paid for lines in North Carolina by the complainant amount to..... 481,189.99

The net income from intrastate traffic in North Carolina should contribute its *pro rata* proportion to the payment of such interest and rental charges, namely, at least 27.60 per cent., or the sum of..... 329,900.89

But the total net earnings from intrastate traffic in the State of North Carolina under the proposed rates and charges would amount to only the sum of..... 28,007.47

Which would leave a deficiency, after paying the amount properly apportionable to intrastate traffic in the State of North Carolina of such interest and rentals of..... 301,893.42

and no returns whatever to the owners of said property.

Complainant says that the figures given in this bill in respect to the result on its revenues for the year ending June 30, 1906, are in their net result fairly representative of past and future conditions, except that the operating expenses of the complainant have since June 30, 1906, increased relatively far more than gross earnings and that the net result will be even more unfavorable and yield a still smaller return to the complainant than is here shown for the year ending June 30, 1906.

The general commercial conditions in North Carolina are prosperous, the transportation service rendered by the complainant in intrastate transportation is large, and at reasonable rates the returns therefor to this complainant would be much greater.

The complainant further shows that there will be no compensa-

tory increase in the business or tonnage of this complainant resulting from the proposed reduced rates, and that there will be no appreciable or substantial increase whatever in such business or tonnage, due to such reduced rates.

137 The lines of railway of this complainant have at all times been operated as economically as practicable, under the existing conditions, and its operating expenses have at all times, under the conditions confronting it, been as reasonably low in amount as they could be made by economical and judicious management, and it has not been possible, under the conditions existing, for the complainant to operate its road for less than it has been operated. In all respects it has confined its operating expenses, its taxes, its interest, and every other expenditure, within the lowest and narrowest limit reasonably practicable under existing conditions. The complainant, therefore, respectfully shows to this Honorable Court that the result of the said rates and charges would be to deprive this complainant of its property without just compensation, to deprive it of the equal protection of the laws, and to take its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which it expressly sets up and claims.

9. Under the laws of the State of North Carolina, the Corporation Commission of that State is required to make reasonable and just rates of freight and passenger charges over the lines of railroad in that State, including the lines of the complainant, and, in pursuance of said duty, the said Commission did, prior to March 2, 1907, fix and establish rates of freight and passenger charges for this complainant which in the opinion of said Commission were reasonable and just, the rates so fixed by said Commission being, in respect to the freight traffic covered by said "Act in respect to Freight Rates," the sum of the locals less fifteen per cent., and being, in respect to the passenger travel covered by said "Act in respect to Passenger Rates" three and one-fourth cents per mile for first class, and two and three-fourth cents per mile for second class, and the rates so fixed by said Commission were in force, and were deemed by said Commission to be just and reasonable, at the time of the passage of said "Act in respect to Freight Rates," and said "Act in respect to Passenger Rates." The complainant shows that since said rates were so fixed by the Commission the cost of performing the service by the complainant has largely increased, and in consequence thereof said rates should, in order to be now just and reasonable, be increased instead of being decreased.

10. The complainant further shows that its present rates in North Carolina are not higher than a reasonable compensation for the service rendered by it to the shippers and to travelers on its lines,

138 and are in no sense excessive or extortionate; that they are not unjustly, unduly, unreasonably or illegally discriminatory as between individuals, nor as between localities, nor as between different kinds of traffic, and that they in no way violate any law. The complainant is advised that it has, as an incident of its property and as a property right, the right to charge for each service which

it renders a reasonable compensation, and that this complainant is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting such charge. The effect of the proposed rates and charges would be to materially diminish this complainant's charges, and to reduce them greatly below what would be a reasonable compensation for the respective services rendered to the shippers and the travelers on its lines. The complainant is advised that to prevent it from charging a reasonable compensation for the service rendered the shipper or the traveler would be to deprive it of its property without just compensation, and without due process of law, and would be to deny to it the equal protection of the laws; and this complainant again claims, in this regard, the benefit and protection of the Fourteenth Amendment to the Constitution of the United States, and shows that if the proposed rates and charges are put into effect the result would be, as aforesaid, to deprive it of its property contrary to the said Fourteenth Amendment to the Constitution of the United States.

11. This complainant is further advised that it has, as an incident of its property and as a property right, the right to increase its charges whenever, under the circumstances then existing, its charges are less than a reasonable compensation for the service which it renders, and that what may be a reasonable charge today for a service may become an unreasonably low charge tomorrow, or at any time thereafter, if conditions in respect to the expense of the service, or other conditions, are so changed as to make it so. The complainant is therefore advised that any action by a State which attempts to fix a maximum charge beyond which the complainant cannot go, no matter how unreasonably low such maximum may become under changed conditions, would be to deprive the complainant of its property right to increase its rate up to what would, under such changed conditions, be a reasonable compensation for the service rendered, and would therefore, violate the Fourteenth Amendment to the Constitution of the United States. This complainant avers that the said "Act in respect to Freight Rates," and the said "Act in respect to Passenger Rates," both undertake to fix a maximum beyond which this complainant cannot go, no
139 matter what may be the circumstances, and that, therefore, said acts are unconstitutional and void, as being in violation of the Fourteenth Amendment to the Constitution of the United States. This complainant further shows that many of its existing rates are lower than is just compensation for the service rendered, and have heretofore yielded, and will continue to yield to the complainant much less than a reasonable return upon the value of its property employed in such service. Since they were fixed, the operating expenses of the complainant have, without its fault, been largely increased, the cost of equipment, of materials and supplies and of labor, necessary for its operation, having all largely increased, so that the net return to this complainant has become much less than it has heretofore been, and it is not now, and never has been, as much as this complainant is entitled to receive. All of said maximum rates fixed by the said acts of the General Assembly of North

Carolina, both those in regard to freight, and those in regard to passengers, are lower than a just compensation for the service rendered, and are lower than would afford this complainant a reasonable and just return upon the value of its property used in performing the services in return for such rates, and that the effect of said acts, because thereof and also because said acts undertake to impose an immovable maximum, is to deprive this complainant of its property without due process of law and of the equal protection of the laws, and to take its property without just compensation, contrary to the said Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which is again in this regard expressly set up and claimed.

12. This complainant further shows that its existing rate fabric is properly adjusted in its relation between its interstate rates and its State rates in North Carolina and in other States, and that all its charges, with perhaps trifling and negligible exceptions;—exceptions which, if they exist, are entirely unimportant in the present connection—are just and reasonable in themselves, and do not and will not give to this complainant more than a just and reasonable return upon the value of its property used in the transportation service which it renders to the public; and that any reduction in its revenues will seriously embarrass and obstruct it in providing, and will deprive it of its power to properly provide, the facilities which the public commerce dependent upon it for transportation absolutely requires for the movement of traffic, both intra and interstate. This complainant is advised that no State has a right to require that its own commerce between points within the State shall be given a preferential service, or shall be carried at preferential and lower rates than other commerce. No State
140 has a right to require such discrimination or partiality in favor of its own traffic. This complainant shows that the effect of the said rates proposed to be put into effect, pursuant to the acts of the General Assembly of North Carolina hereinbefore referred to, will be to destroy the proper adjustment of its intrastate rates in North Carolina to its interstate rates generally, and to its intrastate rates in other States, and to require that a preference shall be given by this complainant, and an undue discrimination exercised by it, in favor of the intrastate traffic in North Carolina over the interstate traffic carried by this complainant, and over the intrastate traffic of this complainant in other States, and that to require such preference and such undue discrimination in regard to the intrastate traffic of the State of North Carolina would be to so regulate and burden interstate commerce as to violate the Commerce Clause of the Constitution of the United States, the benefit and protection of which this complainant respectfully sets up and claims.

13. That by section 3 of the above mentioned "Act in respect to Freight Rates" it is provided that whenever any person, firm or corporation intending to ship freight makes a written application to any railroad company for a car or cars to be loaded in car load lots with any kind of freight embraced in the tariffs of said Company, stating in such application the character of the freight, the number

of cars wanted, the station, depot, siding, wharf or boat landing on the road or line of said railroad company whence the shipment is to be moved, and its final destination, the railroad company shall furnish said car or cars within four days from seven o'clock A. M. of the day following such application; which said application shall be delivered to the agent of the railroad company at the station at or nearest the point of shipment; and it is further provided that any railroad company failing to furnish the car or cars named in said written application shall be subject to a penalty of five dollars per car per day, for each car not furnished, to be recovered by the person, firm or corporation making said application; but the Corporation Commission may excuse from the penalties imposed by this section independent lines not owned, operated, or controlled by any other line or system, where trackage is less than one hundred miles. The requirements of said statute are peremptory, and no exception is made in cases of inability of the carrier occasioned by wrecks or other accidents upon its road involving a detention of traffic, the breaking of bridges, accidental fires, washouts or other unavoidable consequences of heavy weather,

and no exception in cases of a sudden congestion of traffic
141 and actual inability to furnish cars by reason of their temporary and unavoidable detention in other States, or in other places within the same State, or in favor of the necessities of other classes of traffic, inter or intra state. The complainant is advised that the said provision of the said act in respect to freight rates, is, therefore, a regulation of interstate commerce, and violates the commerce clause of the Constitution of the United States, the benefit and protection of which, in this regard, is here again expressly set up and claimed.

14. That by the said "Act in respect to Freight Rates" it is provided that any railroad company doing business in the State of North Carolina, or officer or agent thereof, who shall make charges for shipments of freight in violation of the provisions of said act, shall be deemed guilty of a misdemeanor, and such corporation shall, upon conviction, be fined not less than one hundred dollars, and such officer or agent shall be fined or imprisoned, or both, in the discretion of the court. And by the said "Act in respect to Passenger rates" it is provided that any railroad company violating any provision of the act shall be liable to a penalty of five hundred dollars for each violation, payable to the person aggrieved by such violation, and recoverable in an action to be instituted in the name of said person in any court of North Carolina having competent jurisdiction thereof, and any agent, servant or employee of any railroad company violating said act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court. This complainant is advised that the effect of said act is, in addition to the punishment of the officer, servant, agent or employee for a misdemeanor, to impose upon this complainant for each shipment of freight, at a greater rate than is allowed by the said act in respect thereto, a fine of one hundred dollars, and for each sale of a passenger ticket, at a rate

greater than is allowed by the said act in respect to passengers, a fine of five hundred dollars. An effort is thus made to prevent by these enormous penalties, which are in their nature confiscatory of this complainant's property, any inquiry into the validity of these particular statutes, and to so burden any challenge thereof in the courts that this complainant and the others affected thereby must necessarily submit, rather than take the chances of the penalties imposed, and this complainant is advised that the effect of these penalties and of the legislation which imposes them is, because no other person or business in North Carolina is subjected to such penalties under similar circumstances, to deprive this com-
142 plainant of the equal protection of the laws, and, moreover, is a denial to this complainant of due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, which this complainant respectfully sets up and claims.

15. That by said section 3 of "said act in respect to passenger rates" it is provided that mileage books of one thousand miles in each book shall be kept on sale at such railroad ticket offices in North Carolina as shall be named and designated by the Corporation Commission of North Carolina, and when any such mileage book is purchased it shall be good in the hands of any person or persons named therein on all railroads on which the fare is the same as, or less than, the fare on the road of the company selling such mileage book; and, when the mileage is detached from said book by any other railroad company than the one which sold it, the said mileage shall be redeemable on demand by the railroad company which sold it. This complainant is advised that the effect of said provision is to require this complainant to accept and to carry out, the contracts of other railroad companies as embraced in said mileage book tickets and to permit some other railroad company to collect money for the price of transportation which this complainant by said law will be required to furnish, and is, moreover, to constitute this complainant, without its consent, the agent of other railroad companies for the purpose of sale of tickets and the receipt and accounting for the price thereof. This complainant is further advised that while it may be the proper interpretation of said provision, that it may limit in point of time the mileage tickets which it issues, there is no power given to this complainant to limit, in point of time, the mileage books issued by other carriers which, by the terms of said act, it is required to redeem without reference to the length of time the same might be outstanding. This complainant is advised, and here shows to the court, that the said provisions of section 3 mentioned in this paragraph are unreasonable regulations, as applied to this complainant and its business, and deprives it of its property right of management of its own property and, by seeking to impose upon it unreasonable burdens, deprives it of the proper use of its property without due process of law and also deprives it of the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefits and protection of which this complainant respectfully sets up and claims.

16. This complainant further shows that there is no just reason for making a rule for some of the railroads different from that made for the Complainant, in respect to their freight rates, and in respect to demurrage charges, and that there is no reasonable
143 basis for such difference; and there is likewise no just reason for the difference in rates in the said "Act in respect to Passenger Rates" made in favor of roads in said State whose mileage is sixty miles or under over other railroads, and in favor of railroads constructed within twelve months preceding the first day of January, 1907, or at that time in course of construction, and such railroads as may be constructed within two years from January 1st, 1907, over other railroads. Each of the carriers in said State of North Carolina is, under the Constitution of the United States, entitled to charge a reasonable compensation for the service rendered, and no difference in classification can be made arbitrarily by length of road merely for the purpose of allowing one carrier to charge more than another for the same or similar service. This complainant is, therefore, advised that the effect of said acts in making such difference in classification and in permitting one carrier to charge for the same service in North Carolina a greater sum than is permitted to another carrier in North Carolina is to deprive this complainant of the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, which this complainant, in this regard, here again respectfully sets up and claims.

17. The complainant further shows that the Corporation Commission of North Carolina is required by the said "Act in respect to Freight Rates" to prepare and publish, before the same go into effect, the tariff of rates, charges and tolls to be charged and collected by railroad companies in the State of North Carolina, as authorized by said act, and by the said "Act in respect to Passenger Rates" it is required to publish, before the same go into effect, the rates fixed by the said act for the several railroad companies operating in the State of North Carolina, and the Corporation Commission of North Carolina is further required by the law of North Carolina, if this complainant, in its opinion, violates the said "Act in respect to Freight Rates," or the said "Act in respect to Passenger Rates," and charges a rate in excess of the amount permitted by such acts respectively, to give notice in writing to this complainant of such violation, and, if such charge in excess of the rates fixed by said acts is continued after such notice, said commission is required to present the facts forthwith to the Attorney General, and the said Attorney General and the said Assistant Attorney General are required to take such proceedings thereon as they may deem expedient; and this complainant says that, unless prevented by the injunction of this Honorable Court, the said Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constituting the Corporation Commission of the State of North Caro-
144 lina, will, for the purpose of putting the same into effect, make up and publish said tariff of freight rates

as provided by said "Act in respect to Freight Rates," and will undertake to classify your complainant and the other carriers in North Carolina in accordance with, and will publish the passenger rates prescribed by, said "Act in respect to Passenger Rates," and will, in case this complainant exercises its constitutional right to make charges in excess of the rates fixed by said acts respectively, proceed against this complainant for a violation thereof, and the said Robert D. Gilmer, Attorney General, and the said Hayden Clement, Assistant Attorney General, will, in such case, proceed to impose the penalties prescribed by said act on this complainant therefor.

The complainant further shows that, unless this Court takes jurisdiction of and determines the question of the constitutionality and validity of said statutes and affords complainant relief in respect thereto in this cause, the number of actions for penalties to which it will be thus exposed and which will be thus instituted against it, will be enormous, and it will be very difficult, if not practically impossible, to show in defence of each of said actions and prosecutions, what the effect upon the Complainant's revenues would be of the proposed reductions in its freight and passenger rates or such effect in respect to each particular article of freight and each particular passenger; and in any event, it would be seriously and unjustly burdensome and expensive to the complainant to be subjected to the great multiplicity of suits and prosecutions for penalties to which it would be subjected if relief herein is not granted, and to be obliged to produce in each and all of said suits and prosecutions the necessary evidence to show that said freight tariff and said passenger tariff are unreasonable and unjust and are confiscatory of your complainant's property; and the pendency of such suits, involving in the aggregate such enormous amounts of penalties would depreciate the value of complainant's property and the value of its stocks and bonds and would greatly impair its credit and consequently its ability to perform the public service required by the commerce tributary to its lines, and would inflict great and irremediable injury and damage, not only upon the complainant and upon the holders of its stocks and bonds, but also upon the shipping and travelling public. The complainant avers that in all the multitude of actions and prosecutions referred to the same question would be involved, and that that question is involved, and can be tried and its merits fairly determined in this cause.

145 18. The subject matter of this suit now brought before this Honorable Court is a controversy between citizens of different States, and the amount involved herein, exclusive of interest and costs, exceeds the sum or value of $2,000, and this suit also involves questions arising under the Constitution of the United States, and rights asserted by the Complainant under said Constitution and protected thereby.

19. The complainant shows to the court that its purpose in this cause is, by an orderly proceeding in the courts, to obtain a judicial determination of its rights under the Constitution of the United States, and, if, as it is advised and believes, its just rights in the

premises are imperilled, denied and encroached upon by the several acts of the General Assembly of North Carolina hereinbefore complained of as contrary to the Constitution of the United States, then to obtain a judicial decree establishing and protecting the rights of this complainant, and to that end it is essential, as alleged in this bill, that an injunction shall be issued; but this complainant does not desire in any way injuriously to affect any lawful right of the State or of the people of North Carolina, or of any other person, and hereby complainant offers and undertakes to do all in its power to maintain the *status quo* during the course of this judicial inquiry, and accordingly it consents, and it prays the court, that there may be and shall be adopted herein a proceeding analogous to that provided by section 7 of the Corporation Commission Act of North Carolina, namely, the execution of a bond by the complainant conditioned to pay into the registry of this court, from time to time, when and as the court may so order, such sum or sums of money as shall be equal to the difference between the aggregate freight and passenger rates charged and received by it, and those fixed in or under the said acts of Assembly, and that, as an incident thereto, the complainant shall give to any person purchasing a ticket for travel on its lines in the State of North Carolina a transferable coupon, or other written evidence, representing the sum to which such person, or his transferee, will be entitled upon a final decision upholding the constitutionality of such laws, such coupons, or the amount covered by such other written evidence, in that event to be payable out of the cash deposit in the registry of this court; and that this complainant, from time to time, shall report to the court at intervals to be fixed by the order of the court herein, statements showing the amount of such passenger fares and of the freights by it charged and collected, and of the names of the shippers of such freights, and that from time to time the complainant shall give such further bond or bonds as the court may require to secure the
146 proper payment into court of all amounts which finally it shall be adjudged that it should repay, or reimburse, under the final decision of this court, or upon final review thereof; and that on a final determination herein that this complainant is entitled to the amounts covered by said bond or bonds, that the said bonds be released and canceled by the court, and, if any amounts shall have been paid into the registry of the court pursuant thereto that, upon such determination in favor of the complainant, the sum or sums so paid into the registry shall be repaid to the complainant without further order of the court herein.

20. Complainant avers that it will be irremediably injured unless an injunction be granted as hereinafter prayed, and relief be given to it in this suit.

In consideration whereof, and forasmuch as your complainant is remediless in the premises under the rules of the common law and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, and to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and par-

ticularly as if the same were again here repeated, and they were thereunto specially interrogated, but not under oath, answer under oath being expressly waived, the complainant prays that the said defendants be required so to answer, and that an injunction may be issued out of this court enjoining and prohibiting the defendants Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually, and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, from preparing and publishing the tariff of rates, charges and tolls mentioned in said act in respect to freight rates, and from classifying the railroads operating in North Carolina in accordance with, and from publishing the rates fixed by said act in respect to passenger rates, and from taking any steps, under or in pursuance of the said act of the General Assembly of North Carolina entitled "An Act to prevent unjust discrimination in Freight Rates and to fix maximum charges therefor," ratified March 9, 1907, or under said act of the General Assembly of North Carolina entitled "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," ratified March 2, 1907, and from taking any step
147 in pursuance of any of the laws of the State of North Carolina, either directly or through the said defendant Robert D. Gilmer, Attorney General, or Hayden Clement, Assistant Attorney General, or by or through any other attorney at law, or otherwise, to enforce either of said Acts or the penalties therein prescribed, or any other penalties against the complainant, or against any of its officers, agents, or employees, for failure to put into effect or to observe on any of the lines of complainant in North Carolina the said freight rates or the said passenger rates required by either of said Acts, and enjoining the defendants Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, each and every of them, and their and each of their successors in office, from taking any step under the laws of North Carolina, by themselves or through any other attorney at law, or otherwise, for the purpose of enforcing either of said Acts or any of the penalties thereby prescribed, or any other penalties against the complainant or against any of its officers, agents or employees, for failure to put into effect, or to comply with either of the said Acts of the General Assembly of North Carolina or any of the provisions thereof, and enjoining each and all of said defendants, their servants or agents, from instituting or bringing, or causing to be instituted or brought, as aforesaid, any suit, either at law or in equity, against your complainant, or against any officer, agent or employee of your complainant, compelling your complainant, or any of its officers, agents or employees to put into effect, or observe, either of said Acts, or any provision thereof, and enjoining and prohibiting the said Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, and each of them, and their successors in office, and each and every other attorney at law that may be employed or appointed by the said Corporation

Commission of North Carolina, or by the said Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, Railroad Commissioners, or either of them, or by any other officer of the State of North Carolina, from bringing or prosecuting any action or proceeding, civilly or criminally, against your complainant, or any of its officers, agents or employees, for penalties or fines or damages, or for any cause of action whatsoever, for failure to put into effect on any of the said lines of railway of the complainant in North Carolina any of said tariffs, passenger or freight, or for failure to observe said Acts or either of them, or any provision of either, and from instituting or bringing, or causing to be instituted or brought, any suit at law or in equity, for penalties or otherwise, against the complainant or any officer or agent of the complainant, for charging more for freight or passenger transportation than is provided by said Acts, or so as in any way to prevent or hinder the complainant
148 from increasing its freight and passenger charges, to the extent that such increase may be fair, reasonable and just, and prohibiting all other individuals, persons or corporations from instituting or prosecuting any suit or suits against the complainant, or against any officer, agent or employee of the complainant, for the recovery of any damages or overcharges, or for the recovery or imposition of any penalty or penalties, under or by virtue of said Acts or either of them, or under or by virtue of any other law of North Carolina, because of or growing out of the failure of the complainant or any of its officers, agents or employees, to put into effect, or observe, any of the provisions of said Acts, or either of them; and that the said tariffs, freight and passenger, prescribed by said Acts, and each and every of the provisions of said Acts, and of each of them, be declared to be unreasonable, unfair and unjust to the complainant, and unconstitutional, null and void.

That in the meantime, and until a decision can be had upon your complainant's motion for the injunction herein prayed, a restraining order may be granted, restraining the acts sought herein to be enjoined, your complainant hereby averring that there is danger of irreparable injury from delay if action should not be taken until such motion for an injunction can be tried upon its merits.

That a writ of injunction be issued, etc., commanding, etc., enjoining the defendants as above prayed.

That on a final hearing said injunction as herein prayed may be made perpetual; that the said Act ratified March 9, 1907, and the said Act ratified March 2, 1907, providing for said freight and passenger tariffs, respectively, may each of them be declared null and void by a decree of this court, so far as the same relate to any of your complainant's said lines of railroad in North Carolina, or to any of its business, and that your complainant may have such other and further relief as in justice it may be entitled to, and as to equity is meet.

That this complainant may have leave to make, by supplemental process, as new parties defendant, as occasion may require, any person or corporation who may appear asserting against this complainant, or against any of its officers, agents or employés, any

alleged right or remedy under either of said acts, or otherwise, because of the failure of the complainant, or any of its officers, agents or employés, to put into effect, or to observe, any rate mentioned in either of said acts or any other provision of said acts, or either of them.

149 May it please your Honors to grant unto your complainant the temporary restraining order aforesaid, the writ of injunction aforesaid, and the writ of subpœna addressed to said defendants Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, individually, and as constituting the Corporation Commission of North Carolina, and Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, commanding said defendants, under a penalty therein named, to appear in this court, on some certain day, to be thereby fixed, to answer the premises and abide by and perform such decree as may be passed herein, but said answer as above stated not to be made on oath, answer under oath being expressly waived.

This is the first application by your complainant for a restraining order or injunction in this case.

SOUTHERN RAILWAY COMPANY,
Complainant,
By J. M. CULP, *Vice President.*

CLAUDIAN B. NORTHROP,
W. B. RODMAN,
Solicitors for Complainant.
FRANCIS LYNDE STETSON,
ALEX. P. HUMPHREY,
WALKER D. HINES,
ALFRED P. THOM,
Of Counsel.

150 UNITED STATES OF AMERICA, *District of Columbia, To wit:*

Personally appeared before me, Pearce Horne, a Notary Public, duly commissioned, qualified and acting as such in and for the District of Columbia, J. M. Culp, who, upon being first duly sworn deposes and says:

That he is Vice President of the Southern Railway Company, the complainant in the foregoing bill of complaint; that he has personal supervision of the traffic of said Company; that he has read the foregoing bill and knows the contents thereof; that the facts therein stated, as of complainant's own knowledge, are true; and that the facts therein stated upon complainant's information and belief, he believes to be true.

J. M. CULP.

Sworn and subscribed to before me this 6th day of May in the year 1907.

My commission as Notary Public expires on the 17th day of January, 1911.

In witness whereof I have hereunto signed my name and affixed my notarial seal at the city of Washington in the District of Columbia, this 6th day of May in the year 1907.

PEARCE HORNE,
Notary Public.

151 EXHIBIT No. 1.

AN ACT

AUTHORIZING THE PURCHASERS OF THE RICHMOND AND DANVILLE RAILROAD, THEIR ASSIGNS AND SUCCESSORS, TO BECOME AND BE A CORPORATION, TO ADOPT A NAME THEREFOR, AND TO POSSESS AND EXERCISE GENERAL POWERS; AND AUTHORIZING THE LEASING TO OR BY, AND THE CONSOLIDATION THEREWITH OF, OTHER CORPORATIONS.

[Approved February 20, 1894.]

Whereas, a certain suit in equity is now pending in the Circuit Court of the United States of America for the Eastern District of Virginia, wherein the Central Trust Company of New York is complainant, and the Richmond and Danville Railroad Company, a corporation created by and existing under the Laws of the State of Virginia, is defendant, in which suit it is sought to foreclose the consolidated mortgage, dated the twenty-second day of October, in the year one thousand eight hundred and eighty-six, and upon or about that day duly executed, acknowledged and delivered by said railroad corporation to said Central Trust Company of New York, and subsequently supplemented and confirmed by said railroad corporation by instruments dated November first, eighteen hundred and eighty-six, and April thirtieth, eighteen hundred and eighty-eight, respectively, in which suit also it is proposed to sell the whole of the mortgaged property and premises, being the rights, property, privileges and franchises of the said the Richmond and Danville Railroad Company.

And, whereas, it is deemed desirable and for the interest of this Commonwealth that the said railroad property shall be sold and reorganized in such manner and under such conditions as to secure the largest and best possible facilities and advantages of transportation and communication for the people of this State; now, therefore:

1. *Be it enacted by the General Assembly of Virginia,* that the purchaser or purchasers of the said mortgaged premises of the said the Richmond and Danville Railroad Company at the foreclosure sale thereof in the course of the said suit in equity, and such person or persons as he or they may associate with himself or themselves, shall forthwith be, and they hereby are, constituted a body politic and corporate by the name which they may select, as set forth in the conveyance of said mortgaged premises, or in any writing signed by him or them and recorded in the court in which the said conveyance shall be recorded, and such new corporation shall have,

possess and be invested with all the estate, right, title and interest in and to such railroad and other property, with their appurtenances, and all the franchises, rights and privileges had and pos-
152 sessed by the said Richmond and Danville Railroad Company to the same extent as a purchaser under sections twelve hundred and thirty-three and twelve hundred and thirty-four of the Code of Virginia, and shall perform all the duties prescribed by said sections of said Code; provided, however, that said new corporation shall not be limited as to the amount or classification of its stock or bonds, except that the total amount of stock issued shall not exceed three hundred and fifty million dollars, and shall have no immunity from any lawful State, county or municipal taxation by reason of its former charter or any law heretofore exempting it from taxation.

2. Such purchaser or purchasers may associate with him or them any number of persons in the organization of the new corporation, which may create and issue its stock and its bonds secured by mortgage or otherwise, according to any plan adopted by such purchaser or purchasers, and filed as hereinafter provided.

3. It shall be the duty of such new corporation within six months after the conveyance to it of said mortgaged premises to execute a certificate in writing under its common seal attested by the signature of its President or Vice-President, referring to the sale and conveyance by which it shall have acquired title to such premises and the plan of organization adopted by the purchasers, the amount and classes or kinds of capital stock and mortgage bonds or other obligations authorized to be issued, and also specifying the name of such new corporation and of its President, and the number and names of its Directors, which certificate shall be filed in the office of the Secretary of the Commonwealth of Virginia, and a certified copy thereof shall be conclusive evidence of the existence of such new corporation.

4. In addition to its other powers, such new corporation shall have, and from time to time as occasion arises may exercise, the following powers, or any of them, namely:

(*a*) With the approval of a majority of its stockholders, given at a meeting, it may, from time to time, lease, use, operate, consolidate with, or purchase or otherwise acquire, or be leased, used, operated by, or consolidated with, any railroad or transportation company now or hereafter incorporated by the laws of the United States, or any of the States thereof, or any one or more of such railroad or transportation companies, or any other railroad or transportation company or companies which now are or hereafter may be leased, or used, or operated by, or consolidated with any one or more of such railroad or transportation companies; and, from time to time, it may consolidate its capital stock, property and franchises, by change of name or otherwise, with the capital stock, property and franchises of any other railroad or transportation company, power being hereby granted to any railroad or transportation company or companies incorporated by or under any act or acts of the General Assembly of the State of Virginia, with the approval of a majority in amount

of its or their shareholders respectively given at any meeting, to make and carry out such contracts of consolidation, or lease, sale or other method of acquistion; *provided* that, in all consolidations, a copy of the agreement therefor shall be filed in the office of the Secretary of the Commonwealth of Virginia, and that any corporation with which said new corporation may consolidate, or
153 which it may lease, shall be or remain subject to the jurisdiction of the courts of this State, and all lines of railroad operated by it in the State of Virginia shall be subject to the general laws of the State; and *provided, further,* that any stockholder who dissents from any such consolidation may within sixty days thereafter apply by petition to the Circuit Court of the City of Richmond to determine the value of his stock, and shall be entitled to receive from the new corporation the value as thus determined of such stock upon transfer thereof to the new corporation.

(*b*) It may from time to time purchase, own and hold bonds or other evidences of debt, and shares of the capital stock of any railroad company or companies formed under the laws of this or any other State, and from time to time may guarantee or assume the bonds, evidences of indebtedness or capital stock of any such railroad company.

(*c*) It may from time to time acquire or guarantee the stocks and bonds, or either, of any inland, coast or ocean transportation company or companies, operating to or from any point or points on its lines; and it may develop or aid in the development of its business, by acquiring or guaranteeing the stocks and bonds, or either, of hotel, lighterage, wharf, elevating and other such enterprises convenient in connection therewith or as part thereof.

5. Said new corporation may issue its capital stock of one or more classes or kinds, and in one or more series or grades, with such preferences, conditions and voting power as shall be provided in said plan of organization, and, from time to time, it may increase or decrease the amount of any class or kind or grade of such stock as shall be provided in said plan of reorganization, or with the approval of a majority in amount of the stockholders, given at a meeting of stockholders called for that purpose, unless and except as otherwise expressly provided in certificates representing stock previously issued. The shares of each class of stock shall be of such par amount, and shall entitle the holders to such vote, respectively, as shall be determined in the said plan of reorganization, or by the stockholders in like manner.

6. Such new corporation may borrow money and issue bonds or other evidence of indebtedness therefor, and may secure the same, from time to time, by mortgage or deed of trust upon any or all of its property and franchises, and such new corporation, from time to time, may issue and sell its bonds and its capital stock at such prices and on such terms as shall be specified in said plan of organization, or as a majority in amount of the stockholders shall approve at any meeting, and may receive in payment therefor property, securities or shares in any corporation mentioned in this act, and any stock so issued shall be deemed fully paid and free from any liability.

7. The business, property and concerns of said corporation shall be managed by a Board of Directors consisting of not less than five members, and one of their number shall be chosen as President. The stockholders may adopt by-laws for the government of the stock, property and concerns of the corporation, and for the regulation of its directors, officers and agents, and in and by such by-laws the stockholders may prescribe how such by-laws may be amended or repealed; provided, however, that until such by-laws shall be adopted by the stockholders the corporation shall be governed by by-laws adopted in accordance with the plan of organization.

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8. The principal office of the Company shall be in the City of Richmond, in this State, at which all meetings of the stockholders shall be held; and all other offices and workshops of said Company shall be located in the State of Virginia, as far as the same may be practicable.

9. It shall be lawful for the Circuit Court of the City of Richmond, upon the petition of the President and Board of Directors, at any time to order a change in the name of the Company; but any such change of name shall be without prejudice to the rights of any creditor, or to the exercise of any of the powers and privileges granted by this act.

10. There shall be paid to the Clerk of the county or corporation in which any mortgage authorized by this act may be presented for recordation, the existing rate of taxation for such recordation upon the assessed value of the road-beds, depots, station buildings and lots, and machine shops, fixtures and rolling stock, and any real estate not included in said enumeration, in the State of Virginia, conveyed in such mortgage; and upon presentation to the Clerk of the county or corporation where it is proposed to record said mortgage of a certificate of the Auditor of the State of the amount of the assessed values of the said property within the State of Virginia, and upon the payment of the tax thereon to the said Clerk, the said mortgage shall be recorded without other charge than the clerical fees provided in such cases. Certified copies of such mortgage may be recorded in any county of Virginia in which property covered by such mortgage may be located upon payment of clerical fees.

11. All taxes and debts due or to become due the State of Virginia by the corporation shall be paid in lawful money of the United States, and not in coupons.

12. This act shall be in force from its passage.

A true copy.
Teste:

____ ____,
Clerk of the House of Delegates and
Keeper of the Rolls of Virginia.

Date, ——, —.

155 SOUTHERN RAILWAY COMPANY.

Certificate.

STATE OF VIRGINIA, *City of Richmond, ss:*

Southern Railway Company, a corporation organized and existing under and pursuant to the provisions of an Act of Assembly of the State of Virginia, approved February 20, 1894 (of which act a copy, marked "Schedule D," is hereunto annexed and made a part of this certificate), entitled—

"An Act authorizing the purchasers of the Richmond and Dan-"ville Railroad, their assigns and successors, to become and be a "corporation, to adopt a name therefor, and to possess and exercise "general powers; and authorizing the leasing to or by, and the con-"solidation therewith of, other corporations,"

in conformity to the requirements of Section 3 of the said act, does hereby certify as follows, viz:

First. The said Southern Railway Company, upon June 18, 1894, did acquire title to the rights, property, privileges and franchises of the Richmond and Danville Railroad Company embraced in and covered by its consolidated mortgage to the Central Trust Company of New York, dated October 22, 1886, under and by means of the following sale and conveyance, viz:

(1) *The sale of the said mortgaged premises* was held in the City of Richmond, on the 15th day of June, 1894, under a decree of foreclosure and sale entered on the 13th day of April, 1894, in a certain suit in equity pending in the Circuit Court of the United States of America for the Eastern District of Virginia, wherein the Central Trust Company and others were complainants and the Richmond and Danville Railroad Company was defendant, in which suit it was sought to foreclose the said consolidated mortgage, and also to sell the whole of the mortgaged property and premises, being the rights, property, privileges and franchises of said the Richmond and Danville Railroad Company, at which sale the mortgaged premises were bid in by and struck off to Charles H. Coster and Anthony J. Thomas, a Purchasing Committee, as purchasers thereof, with the intent and for the purpose of vesting the same in the said Southern Railway Company thereafter to be organized by the said purchasers and their associates, pursuant to the laws of the State of Virginia.

(2) *The conveyance of the said mortgaged premises* was made pursuant to the order of the Circuit Courts of the United States of America, by the Special Masters in said suit, Matthew F. Pleasants, Thomas S. Atkins and Charles Price, upon the 18th day of June, 1894, to the said Charles H. Coster and Anthony J. Thomas, as Purchasing Committee for the benefit of the said Southern Railway Company, such conveyance having been duly recorded on the
156 said 18th day of June, 1894, in the Chancery Court of the City of Richmond, in the State of Virginia.

Second. *The plan of organization adopted by the purchasers* is that of which a copy is hereunto annexed, marked "Schedule B" and made part of this certificate.

Third. *The amount and classes or kinds of capital stock* already authorized to be issued by the new corporation (subject to increase up to but not exceeding the limit prescribed by said act) were and are:

One million two hundred thousand shares of common stock, and six hundred thousand shares of preferred stock, each and every of such shares being of the par value of one hundred dollars each, and the aggregate par value of such shares being one hundred and eighty million dollars.

The preferences, conditions and voting power of such capital stock are as set forth in the said plan of organization hereunto annexed, marked "Schedule B."

Fourth. *The amount and classes or kinds of mortgage bonds or other obligations heretofore* authorized to be issued by said corporation are bonds secured by mortgage payable as therein specified, and, except as and when registered as therein provided, being negotiable instruments, passing by delivery, free from any and all defences against the holder thereof, such bonds having been authorized to the amount of one hundred and twenty-four million five hundred thousand dollars, including what are known as its *"East Tennessee Reorganization Mortgage Bonds,"* for the aggregate amount of $4,500,000, and its *"First Consolidated Mortgage Gold Bonds,"* for the aggregate amount of $120,000,000, of which last-mentioned bonds a large part are not now to be issued, but are reserved for various purposes mentioned in the mortgage securing said bonds, dated October 2, 1894, and duly recorded November 9, 1894, in the office of the Clerk of the Chancery Court of the City of Richmond, in the State of Virginia, and also in other offices; and among other purposes for the redemption and payment in due course of the bonds of the Richmond and Danville Railroad Company, secured by its two mortgages to Central Trust Company of New York, as Trustee, dated respectively October 5, 1874, and February 1, 1882, such last-mentioned mortgage having been amended by agreement dated July 24, 1894, between the said Central Trust Company and the said Southern Railway Company, a part of the mortgaged premises first above mentioned having been sold and purchased subject thereto, and such bonds have been and are assumed by the Southern Railway Company; and also for the payment and redemption in due course of the said *"East Tennessee Reorganization Mortgage Bonds;"* and also for the redemption and payment on July 1, 1909, of such of the first mortgage bonds of the Charlotte, Columbia and Augusta Railroad Company as shall have been extended in accordance with the provisions of an agreement made July 5, 1894, between the Southern Railway Company and the Maryland Trust Company, the holders of all such extended bonds then outstanding being entitled to exchange the same at par for like amount of the said First Con-
157 solidated Mortgage Bonds, interest to be adjusted properly at the time of every such exchange.

"Schedule A," hereunto annexed, is a list of the properties now embraced in the Southern Railway System, and is also a statement of bonds and obligations issued or assumed by or chargeable upon property purchased by Southern Railway Company under its said charter, "Schedule D," and showing the letter date of issue, number of bonds, amount of issue, rate of interest, and when and where payable; the only bonds issued directly by Southern Railway Company being those issued under the two mortgages first above mentioned, dated October 2, 1894.

Fifth. The name of the new corporation is "Southern Railway Company," and the name of its President is Samuel Spencer.

Sixth. The Directors of the new corporation are nine in number, and their names are:

Aubin L. Boulware, Richmond, Va.
Charles H. Coster, New York, N. Y.
Harris C. Fahnestock, New York, N. Y.
Thomas F. Ryan, do.
Samuel Spencer, do.
Anthony J. Thomas, do.
Samuel Thomas, do.
Skipwith Wilmer, Baltimore.
*J. Hood Wright, New York.

In witness whereof, the said Southern Railway Company has executed this certificate under and by its common seal, attested by the signature of its President, this fourth day of December, 1894.

SAMUEL SPENCER,
President of the Southern Railway Company.

[Seal of Southern Railway Company.]

Attest:
W. A. C. EWEN, *Secretary.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, George H. Corey, a Commissioner of Deeds for the State of New York, thereto duly appointed by the Governor of the State of Virginia, and a Notary Public for the said City and County of New York, thereto duly appointed by the Governor of the State of New York, do hereby certify that Samuel Spencer, whose name is signed to the foregoing and hereto annexed certificate bearing date the fourth day of December, 1894, as President of the Southern Railway Company, with whom I am personally acquainted, and who is personally known to me to be the President of the Southern Railway Company, the corporation described in and which executed the said certificate, personally appeared before me at my office in my said County and corporation, for himself and on behalf of the Southern Railway Company, and being informed of the contents of the
158 said certificate, he did on this day acknowledge the due execution of the foregoing certificate on the day the same bears

*A vacancy exists because of Mr. Wright's death, November 12, 1894.

date; and further acknowledged that he voluntarily executed, signed and sealed the said certificate as his free act and deed, and as the free act and deed of the said Southern Railway Company, for the purposes and uses therein mentioned.

And the said Samuel Spencer, being by me first duly sworn did depose and say: That he resides in the City of New York, in the State of New York; that he is the President of the Southern Railway Company; that he knows the corporate seal of the said Company; that the seal affixed to the foregoing instrument is the corporate seal of the said Company, and was thereto affixed by authority of the Board of Directors of the said Company, and that he signed his name thereto by like authority as President of said Company.

In witness whereof, I have hereunto set my hand and seals of office as Commissioner of Deeds for the State of Virginia and as Notary Public for the City and County of New York, in the State of New York, at my office, this fourth day of December, 1894.

[Seal of George H. Corey, Commissioner for Virginia.]

GEO. H. COREY,
Commissioner for the State of Virginia in New York.

[Seal of George H. Corey, Notary Public, New York.]

GEO. H. COREY,
Notary Public for the City and County of New York in the State of New York.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Henry D. Purroy, Clerk of the City and County of New York, and also Clerk of the Supreme Court in said City and County, the same being a court of record do hereby certify that George H. Corey, whose name is subscribed to the certificate of acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment a Notary Public in and for the City and County of New York, dwelling in the said City, commissioned and sworn, and duly authorized to take the same and to administer oaths; and, further, that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to the said certificate of acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 12th day of December, 1894.

[Seal of the Supreme Court, City and County of New York.]

HENRY D. PURROY, *Clerk.*

159 "SCHEDULE A."

(*a*) LINES OF WHICH THE OWNERSHIP HAS BEEN ABSOLUTELY MERGED INTO THE SOUTHERN RAILWAY COMPANY (OR THE COMPANIES OF LIKE NAME IN KENTUCKY AND MISSISSIPPI) BY PURCHASE AT FORECLOSURE OF BY OTHER CONVEYANCE:

Richmond, York River & Chesapeake	about	39.	miles.
Richmond & Danville	"	145.53	"
Piedmont	"	48.	"
Washington, Ohio & Western	"	50.12	"
Western North Carolina	"	307.	"
Statesville & Western	"	20.36	"
Northwestern North Carolina	"	100.15	"
Clarksville & North Carolina	"	7.03	"
Oxford & Clarksville	"	49.32	"
Oxford & Henderson	"	12.94	"
Atlantic, Tennessee & Ohio	"	.44	"
Charlotte, Columbia & Augusta	"	190.53	"
Columbia & Greenville	"	164.98	"
Georgia Pacific	"	552.	"
East Tennessee, Virginia & Georgia	"	1,254.40	"
Louisville Southern	"	123.88	"
			3,109.24 miles.

(*b*) OPERATED LINES OF WHICH ALL OR NEARLY ALL THE STOCK IS OR IS EXPECTED TO BE OWNED BY SOUTHERN RAILWAY COMPANY:

Virginia Midland* and branches (leased)	about	400.70	miles.
High Point, Randleman, Asheboro & Southern (all bonds also owned)*	"	27.81	"
North Carolina Midland (all bonds also owned)*	"	26.11	"
Elberton Air Line (all bonds also owned)*	"	50.36	"
Roswell	"	9.11	"
Yadkin*	"	41.17	"
State University (no bonds issued)	"	10.20	"
			565.46 miles.

*MEMO.—It is intended, later on, to bring about a conveyance of these lines to the Southern Railway Company.

160 (*c*) LEASED LINES:

North Carolina Railroad	about 223.20 miles.	
Atlanta & Charlotte	" 268.54 "	
		491.74 miles.

(*d*) LINES OPERATED UNDER VARIOUS ARRANGEMENTS:

Lawrenceville (all bonds and majority of stock owned, but line is of no value and has been discontinued)	9.61 miles.	
Richmond & Mecklenburg (all second mortgage bonds and most of stock owned)	31.45 "	
Asheville & Spartanburg, and Spartanburg, Union & Columbia (operated temporarily for account of first mortgage bondholders)	133.90 "	
		174.96 "
(*e*) KNOXVILLE & OHIO RAILROAD (nearly all the stock owned)		66.00 "
(*f*) BALTIMORE, CHESAPEAKE & RICHMOND STEAMBOAT LINE (all the stock and all certificates of debt owned)		200.00 "
Total mileage		about 4,607.40 miles.

(*g*) LINES OPERATED INDEPENDENTLY IN WHICH SOUTHERN RAILWAY COMPANY IS INTERESTED AS BONDHOLDER:

Danville & Western	about 70. miles.	
Chester and Lenoir, north end	" 33. "	
Blue Ridge (believed to be of no value)	" 34.02 "	
Laurens (believed to be of no value)	" 29.90 "	
Milton & Sutherlin (believed to be of no value)	" 6.50 "	
Hartwell	" 10.10 "	
		183.52 miles.
Grand total		about 4,790.92 miles.

"SCHEDULE A"—*Continued.*

SOUTHERN RAILWAY COMPANY.

Outstanding Mortgage and Obligations.

Principal and Interest payable, except as otherwise specified, in the City of New York.

Name of railroad company.	Description of bond or obligation.	Due.	Int.	Amount.
	A.			
	On properties merged into Southern Railway Company.			
Richmond & Danville	Consolidated gold 6 %	Jan., 1915	J & J.	$5,997,000.00
do.	Debenture 5s (formerly 6s), earliest coupon April, 1896	April, 1927	A. & O.	3,368,000.00
do.	Equipment S. F. gold 5 % (1)	Sept., 1909	M. & S.	1,194,000.00
Richmond, York River & Chesapeake	Equipment Notes	Various		507,835.00
do. do.	First Mortgage 5 %	Jan., 1910	J. & J.	400,000.00
Washington, Ohio & Western	Second Mortgage 4½ %	Nov., 1910	M. & N.	500,000.00
Atlantic, Tennessee & Ohio	First Mortgage 4 %	Feb., 1924	F. & A.	1,025,000.00
Western North Carolina	First Mortgage 6 %	April, 1913	A. & O.	150,000.00
Charlotte, Columbia & Augusta	First Mortgage gold 6 %	July, 1914	J. & J.	2,531,000.00
do. do.	First Mortgage gold 7 %, due January 1, 1895, extended at 5 % to July, 1909	July, 1909	J. & J.	2,000,000.00
Columbia & Greenville	Second Mortgage 7 %, earliest coupon October, 1895	Oct., 1910	A. & O.	500,000.00
Georgia Pacific	First Mortgage gold 5% to January, 1898, 6% thereafter	Jan., 1916	J. & J.	2,000,000.00
do.	First Mortgage gold 5% to January, 1898, 6% thereafter	Jan., 1922	J. & J.	5,660,000.00
do.	Equipment S. F. gold	Various	F. & A.	787,000.00
East Tennessee, Virginia & Georgia	Equipment Notes	Various		359,005.54
do. do.	Divisional Mortgage 7 %	July, 1900	J. & J.	3,123,000.00
do. do.	Divisional Mortgage gold 5 %	July, 1930	J & J	3,106,000.00
do. do.	Consolidated gold 5 %	Nov., 1956	M & N.	12,770,000.00
Alabama Central	Equipment Notes (including Louisville Southern)	Various		415,[illegible]1.59
Southern Railway	First Mortgage gold 6 %	July, 1918	J. & J.	1,000,[illegible].00
	East Tennessee Reorganization dated October 2, 1894, for old Equipment and Improvement bonds, gold, 4 % to March, 1898, inclusive, 5 % thereafter	Mar., 1938	M. & S.	4,500,000.00

(1) Also payable in London, England.

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JAMES H. WOOD.

THIS PAGE BOUND VERTICAL IN BOOK

162 Name of railroad company.	Name of bond.	Due.	Int.	Amount.
	B.			
	On properties practically owned by (*) or leased to (†) Southern Railway Company.			
*† Virginia Midland	Serials (1)	Various....	M. & S.	$7,635,000.00
*† do.	General Mortgage 5 %	May, 1936	M. & N.	4,859,000.00
*† Charlottesville & Rapidan	First Mortgage 6 % (2)	July, 1913	J. & J.	421,700.00
*† Franklin & Pittsylvania	First Mortgage 6 % (3)	July, 1913	J. & J.	79,000.00
† Atlanta & Charlotte Air Line	Preferred Mortgage 7 %	April, 1897	A. & O.	500,000.00
† do. do.	First Mortgage 7 %	Jan., 1907	J. & J.	4,250,000.00
† do. do.	Income 6 %	April, 1900	A. & O.	750,000.00
† do. do.	Stock 5–6 %	.....	M. & S.	1,700,000.00
† North Carolina	Rental Equivalent to 6½ % on stock	Sept., 1901	J. & J.	4,000,000.00
* Knoxville & Ohio	First Mortgage gold 6 %	July 1, 1925	J. & J.	2,000,000.00
	C.			
	On all the property of the Southern Railway Company, including leaseholds, stocks and bonds.			
Southern Railway	First Consolidated Mortgage gold 5 % dated October 2, 1894—total issue $120,000,000, of which:	July, 1994	J. & J.	
	Reserved to take up foregoing bonds, stocks, &c...	$78,088,372.13		
	do. for new construction and other purposes.	20,000,000.00		
	To be issued now	21,911,627.87	.....	21,911,627.87
	Total existing debt Southern Railway Company		.....	$100,000,000.00

(1) Interest payable in Baltimore, Md.
(2) Interest payable in Philadelphia, Pa.
(3) Interest payable in Baltimore, Md.

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"SCHEDULE B."

Southern Railway Company.

The purchasers of the railroad and other property of the Richmond and Danville Railroad Company, at the foreclosure sale thereof held in the City of Richmond on the 15th day of June, 1894—viz., Charles H. Coster and Anthony J. Thomas and their associates—constituting Southern Railway Company, a corporation organized and existing under the laws of the State of Virginia, and particularly an Act of Assembly of said State entitled—

"An Act authorizing the purchasers of the Richmond and Dan-
"ville Railroad, their assigns and successors, to become and be a
"corporation, to adopt a name therefor, and to possess and exercise
"general powers, and authorizing the leasing to or by, and the con-
"solidation therewith of, other corporations," approved February 20, 1894,

have adopted and adopt the following as

The Plan of Organization.

First. The said purchasers and the Southern Railway Company have accepted and do accept the before-mentioned Act of Assembly of the State of Virginia, and, anything herein contained or herefrom omitted to the contrary notwithstanding, they do reserve and retain the right from time to time and at all times to exercise and enjoy any and every right, power, privilege and franchise conferred in and by said Act of Assembly of the Commonwealth of Virginia approved February 20, 1894, or by any other act or law of which the Southern Railway Company may lawfully claim the benefit.

Second. The said purchasers and the Southern Railway Company have fixed the capital stock of the corporation at $180,000,000, divided into one million eight hundred thousand shares of the par value of $100 each, of which six hundred thousand shares are preferred stock and the remainder are common stock, reserving the right to increase such capital stock up to, but not exceeding, the limit authorized by the said Act of Assembly of the Commonwealth of Virginia approved February 20, 1894, and to increase or decrease the amount of any class or kind or grade of its capital stock, and also reserving any and all right to redeem and purchase at par any and all preferred stock, or any kind, class or grade thereof.

The Preferred Stock is entitled to the following preferences, and to no other—viz:

In each and every fiscal year after the first day of July, 1895, to receive non-cumulative dividends at and up to the rate of five per cent. per annum in preference and priority to the payment of any dividend on the Common Stock in such fiscal year, but only from
164 the net profits of the Company as such shall be fixed and determined by the Board of Directors, and only when and as such Board shall declare dividends therefrom; but, notwith-

standing the preference hereby declared, if, after providing for the payment of dividends for any fiscal year on the Preferred Stock outstanding in such year, there shall remain a surplus of net profits of such year, the Board of Directors may declare and pay dividends upon any other stock of the Company for such year out of such surplus net profits.

Such Preferred Stock is authorized to the amount of Sixty Million Dollars; and, without the consent of the holders of a majority of such Preferred Stock then outstanding, the Company can neither increase such authorized amount thereof nor put upon its property any mortgage to secure bonds for more than the aggregate principal sum of one hundred and twenty million dollars, in addition to prior liens thereon, assumed, extended or renewed, or any substitutions therefor, against which a like amount of bonds shall be reserved out of such amount of $120,000,000.

The conditions and voting power in respect of and belonging to all such stock are as follows:

With the exception of one thousand shares of common stock, heretofore issued or reserved to qualify Directors, or for other purposes, all of the stock of the Company—viz., 1,199,000 shares of common stock and 500,000 shares of preferred stock—have been duly issued and have been duly delivered to J. Pierpont Morgan, Charles Lanier and George F. Baker and their successors, as Voting Trustees, under an agreement dated October 15, 1894, with the exclusive right and privilege, in the said Voting Trustees during the continuance of their trust, as stated in said agreement, to vote upon and in respect of all such stock so issued to them, and also to collect and receive any dividends declared in respect of such stock, and to distribute any such dividends among the holders of their stock-trust certificates, which holders in due course will be entitled to receive in exchange therefor certificates for corresponding amounts and kinds of the capital stock of this Company then entitling them to one vote for each share thereof, and in the meantime to receive payments equal to the dividends, if any, collected by the Voting Trustees upon such number of such shares standing in the name of the Voting Trustees, who, until after the actual delivery of such stock certificates, shall possess and shall be entitled to exercise all rights of every name and nature, including the right at each and every corporate meeting or election to cast one vote for and in respect of each and every share of the capital stock of the Southern Railway Company on account of which such stock-trust certificates shall be issued, it being expressly stipulated that no voting right passes from the Company or from the Voting Trustees by, under or in respect of any such stock-trust certificate, or by or under any agreement expressed or implied.

165 Third. The prices and terms upon which the Southern Railway Company from time to time has issued and sold or shall issue and sell its bonds and its capital stock are those which heretofore have been or from time to time hereafter shall be approved by a majority in amount of the stockholders at their meetings, bonds to the aggregate amount of $124,500,000 having been

heretofore authorized for all purposes, including the payment of all prior liens.

Fourth. The By-Laws of the Southern Railway Company are those which, on the fifth day of July, 1894, were duly adopted by the Board of Directors of said Company at its first meeting, and upon the same day adopted and ratified by the stockholders at their first meeting, subject to the amendments thereto from time to time adopted and to be adopted as therein provided, and the officers and duties of the officers of the Company shall be as provided by such By-Laws, a true copy of such By-Laws, as amended to this date, being hereunto annexed, marked "Schedule C," forming part of this plan of organization.

In witness whereof, the said purchasers—Chas. H. Coster and Anthony J. Thomas—have hereunto subscribed their names, and the Southern Railway Company has caused its common seal to be hereunto affixed and to be attested by the signature of its President this fourth day of December, 1894.

C. H. COSTER.
ANTHONY J. THOMAS.

[Seal of Southern Railway Company.]

SOUTHERN RAILWAY COMPANY,
By SAMUEL SPENCER, *President.*

STATE OF NEW YORK, *City and County of New York, ss:*

I, George H. Corey, a Commissioner of Deeds for the State of New York, thereto duly appointed by the Governor of the State of Virginia, and being also a Notary Public for the said City and County of New York, thereto duly appointed by the Governor of the State of New York, do hereby certify that Charles H. Coster and Anthony J. Thomas, whose names are signed to the writing hereto annexed, bearing date on the fourth day of December, 1894, have severally acknowledged the same before me in my State and corporation aforesaid.

And I do further certify that in my said State and corporation, on this fourth day of December, 1894, before me personally appeared Samuel Spencer, whose name is signed to the foregoing and hereto annexed Plan of Organization, bearing date the fourth day of December, 1894, as President of the Southern Railway Company, the corporation described in and which executed the said plan, and for himself and in behalf of the said Southern Railway Company, being informed of the contents of the said plan, did on this day acknowledge the due execution of the plan on the day the same bears date; and further acknowledged that he voluntarily executed, signed,
sealed and delivered the said plan as his free act and deed,
166 and as the free act and deed of the said Southern Railway
Company, for the uses and purposes therein mentioned, and for the purposes therein contained:

And the said Samuel Spencer, being by me first duly sworn, did depose and say: That he resided in the City of New York; that he is

President of the said Southern Railway Company; that he knows the corporate seal of the said Company; that the seal affixed to the foregoing Plan is the corporate seal of the said Company, and was thereto affixed by authority of the Board of Directors of the said Company, and that he signed his name thereto by like authority as President of said Company.

In witness whereof, I have hereunto set my hand and seals of office as Commissioner of Deeds for the State of Virginia, and as Notary Public for the City and County of New York, at my office, this fourth day of December, 1894.

[Seal of George H. Corey, Commissioner for Virginia.]

GEORGE H. COREY,
Commissioner for the State of Virginia in New York.

[Seal of George H. Corey, Notary Public, New York.]

GEORGE H. COREY,
Notary Public for the City and County of New York in the State of New York.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Henry D. Purroy, Clerk of the City and County of New York, and also Clerk of the Supreme Court in said City and County, the same being a court of record, do hereby certify that George H. Corey, whose name is subscribed to the certificate of acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment a Notary Public in and for the City and County of New York, dwelling in the said City, commissioned and sworn, and duly authorized to take the same and to administer oaths; and, further, that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to the said certificate of acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 12th day of December, 1894.

[Seal of the Supreme Court, City and County of New York.]

HENRY D. PURROY, *Clerk.*

167 "SCHEDULE C."

BY-LAWS

OF THE

SOUTHERN RAILWAY COMPANY,

December 4, 1894.

Stockholders.

1. The annual meeting of the Stockholders, for the purpose of electing Directors, and for the purpose of transacting such other business as may come before the meeting, shall be held on the Tuesday preceding the last Tuesday in October of each year, at the office of the Company in the City of Richmond, Virginia, and notice thereof shall be given for two successive weeks in a newspaper published in the City of Richmond.

2. A general meeting of the Stockholders may be held at any time upon the call of the Board of Directors, or Stockholders holding together one-tenth of the capital stock, upon their giving notice of the time and place for such meeting for thirty days in one of the principal newspapers published in the City of Richmond, the City of Knoxville, Tennessee, and the City of New York.

3. To constitute a meeting of Stockholders, there must be present, either in person or by proxy, those who can give a majority of all the votes which could be given by all the Stockholders. If a sufficient number fail to attend at the time and place for the meeting, those who do attend may adjourn from time to time until a meeting shall be regularly constituted. A meeting of Stockholders may adjourn from time to time until their business is completed. No notice shall be necessary for the holding of an adjourned meeting.

4. At any meeting of the Stockholders each Stockholder may, in person or by proxy, duly appointed by instrument in writing subscribed by such Stockholder, duly attested, and filed with the Secretary at or before the meeting, give one vote on each share of stock held by him in the same right.

5. In order to effect an organization, the meeting shall be called to order by the President, or in his absence by the First, Second or Third Vice-President, in the order named, and a Chairman shall be elected. In the absence of the President and all the Vice-Presidents, any Stockholder, or the duly appointed proxy of any Stockholder, may call the meeting to order. The polls shall be opened as soon as the organization of the meeting shall admit of, and shall be kept open for one hour, under the supervision of three Tellers, who shall have been previously appointed by the Board of Directors; or if not so appointed, or, if in case of appointment, all or any of them shall fail to act, appointments to fill the vacancies shall be made at such meeting by its Chairman. The votes for Directors, or

for determining any other question as above provided, shall
168 be by ballot, and each Stockholder shall be entitled to one vote for each share of stock held by him.

As soon as may be after the polls are closed, the Tellers shall make and subscribe, and report to the meeting, a certificate of the result of the election, which shall be entered at large on the records; and thereupon each person elected shall be notified by the Secretary of his election.

The Directors may be residents of any part of the United States. In case any person elected shall not, within thirty days after date of the notice of his election, signify his acceptance, the Board of Directors may declare a vacancy to exist.

6. Certificates of stock, signed by the President or one of the Vice-Presidents and by the Secretary or Assistant Secretary, and sealed with the corporate seal of the Company, shall be issued to the Stockholders, subject to such rules and regulations as the Board of Directors may from time to time prescribe; and transfers of certificates shall be made only on the books of the Company, on the written order of the holder of his duly-appointed attorney, upon surrender of the original certificate. The transfer books shall be closed for at least ten days previous to, and on the day of, the annual meeting, and at and for such other times as the Board of Directors shall order.

7. When a person to whom such a certificate is issued alleges it to have been lost, he shall file in the office of the Company, first, an affidavit setting forth the time, place and circumstances of the loss; second, proof of his having advertised the same, in a newspaper of general circulation published in the City of New York, once a week for two successive months; and, third, a bond to the Company with one or more sufficient sureties, with condition to indemnify all persons against any loss in consequence of issuing a new certificate in place of the former; and thereupon the Board of Directors may cause a new certificate to be issued.

8. For the convenience of security holders the Board of Directors may arrange for an agency in New York for the transfer of Stock and of Registered Bonds of the Company; proper records of such transfers to be kept at such agency, and to be open to the inspection of the Secretary.

Directors.

9. From and after the first annual meeting of the Stockholders the Board of Directors shall consist of nine members (of whom the President shall be one), who shall hold their office for one year, and until their successors are elected. Any vacancy in the Board may be filled by a majority of the Directors. A majority of the Board shall be a quorum for the transaction of business.

10. Regular meetings of the Board shall be held on the second Thursday of January, April, July and October, and special meetings of the Board may be called by order of the President or of the Executive Committee, or of a majority of the Board, and written notice

of each meeting, whether regular or special, shall be delivered
169 or mailed to each Director a reasonable time before the meeting. All such meetings shall be held either in Richmond, Knoxville, or in New York City.

11. The Directors elected at the annual meeting shall meet as soon as may be thereafter, and they shall elect a President, a First Vice-President, a Second Vice-President and a Third Vice-President of the Company, each to hold office for one year, or until the next election of the Directors, and until his successor is elected; and they shall also elect, to hold office during the pleasure of the Board, a General Counsel, a Secretary and Treasurer, and they may also elect or appoint an Auditor. The President shall be elected from among the members of the Board.

12. The order of business at all meetings of the Board, except adjourned meetings, shall be as follows:

1st. Reading the Minutes of the last meeting.
2nd. Correspondence.
3rd. Reports of Officers.
4th. Reports of Standing Committees.
5th. Reports of Special Committees.
6th. Unfinished Business.
7th. Original Resolutions and New Business.

13. In case a vacancy shall have occurred in the office of the President, First, Second or Third Vice-President, Secretary or Assistant Secretary, Treasurer or Assistant Treasurer, or Auditor, the Board of Directors shall fill the same as early as practicable, and until so filled the President, or in his absence the First, Second or Third Vice-President, in the order named, may make an appointment *pro tem.*, to fill the vacancy temporarily; or in case of temporary incapacity or absence of any officer, other than the President or First, Second or Third Vice-President, the President, or in his absence the First or Second Vice-President, in the order named, may make an appointment *pro tem.*, to act in place of the officer so temporarily incapacitated or absent, but such appointment shall be subject to change by the Board or Executive Committee at any regular or special meeting thereafter.

14. The compensation of all officers of the Company shall be fixed by the Board of Directors from time to time. Each Director shall be paid ten dollars for each meeting of the Board, and of any committee of which he is a member, at which he shall attend, in addition to transportation and other expenses actually incurred, at the rate of not exceeding four cents per mile to and from his place of residence to the place of meeting.

15. The Board of Directors shall make a report to the Stockholders at their annual meeting.

The Corporate Seal.

16. The Common Corporate Seal is, and until otherwise ordered by the Board of Directors shall be, an impression upon paper or wax of a circular device, such as that impressed upon the margin hereof,

being an ornamental center surrounded by the words *"Southern Railway Company, June, 1894,"* within, containing circumferential lines.

The Secretary of the Company shall procure, preserve and keep duplicate stamps suitable to make such impression of such corporate seal; and, when as directed by the special or general resolution of the Board of Directors or of the Executive Committee, the President, either of the three Vice-Presidents or the Secretary or Assistant Secretary, may and shall use one or the other of such duplicate stamps in impressing such corporate seal upon the documents, indentures and obligations of the Company.

President and Vice-Presidents.

17. The President shall preside at all meetings of the Stockholders and of the Directors. In his absence the First Vice-President, Second Vice-President or Third Vice-President, in the order named, shall preside. In the absence of the President and the First, Second and Third Vice-Presidents, the members present shall appoint one of their number to preside. The President shall have general charge, control and supervision of all the business and affairs of the Company, and over all its officers, agents and employees. Except when these By-Laws otherwise provide, or the Board shall otherwise direct, all officers and heads of departments of the Company shall be appointed by him and subject to removal by him.

18. The First Vice-President shall, during the absence or inability of the President, perform his duties. During the absence or inability of the President and First Vice-President the Second Vice-President shall perform his duties, and during the absence or inability of the President and First and Second Vice-Presidents the Third Vice-President shall perform his duties. The Vice-Presidents shall also perform such other duties as may from time to time be assigned to them respectively by the President or by the Board.

19. All deeds of conveyance of the Company's lands, and all other instruments required to be executed by the Company itself, under its corporate seal, shall be signed by the President (or First, Second or Third Vice-President) for and in the name of the Company, except in such cases as the Board of Directors shall otherwise order; and the seal of the Company shall be thereto affixed by the President (or First, Second or Third Vice-President) or by the Secretary or Assistant Secretary, and attested by the Secretary or Assistant Secretary, and the execution thereof shall be acknowledged by the President (or First, Second or Third Vice-President) or other person designated by the Board to execute the same, as the act and deed of the Company, in such manner and form as may be required by law.

Other Executive Officers.

20. The Board of Directors shall have power to elect or appoint any other officers or assistants, who shall perform such duties as may be assigned to them by the Board by general rules, or from time to time; and who shall hold their office during the pleasure of the Board.

Committees.

21. There shall be an Executive Committee, consisting of four members of the Board, of whom the President shall be one. Other Committees, standing or special, may be appointed with such duties and powers as shall be assigned to and given them by the Board. Meetings of the Executive Committee may be called by order of the President, or of a majority of said Committee to be held at such convenient place or places as he or they shall appoint, on written notice delivered or mailed to each member thereof a reasonable time before the meeting, and three members shall constitute a quorum.

In case of the anticipated absence of any member of the Executive Committee from any meeting of said Committee, or in case of inability of any member to attend such meeting, the President (or First, Second or Third Vice-President, in the order named, in his absence) may, at any time before such meeting is called to order, appoint a Director to serve during such absence or inability in place of the absent member or of the member unable to attend, but such appointment shall not extend to more than one member absent or unable to attend, and any member of the Committee present at any meeting may object to such appointee before the meeting is called to order, in which case the appointment shall be void and of no effect. No Vice-President shall be a member of the Executive Committee.

22. The Executive Committee, when the Board is not in session, shall have and may exercise, but only by the unanimous vote of all the members present at a meeting, all the powers of the Board of Directors; and they shall cause to be kept a full and accurate record of all the actions and proceedings, and report the same from time to time to the Board.

23. The said Committee shall have charge of all questions of finance, accounts and claims. It shall be the duty of this Committee, from time to time, at their discretion, and whenever directed by the Board, to audit and pass upon the accounts of the Treasurer, and to examine the transfer books of the Company; they shall report to the Board at every regular meeting, and at any special meeting, as occasion shall require.

24. All reports of Committees, standing or special, shall be made to the Board in writing, signed by the Chairman or by the member designated by the Committee to make the report.

25. All Committees shall be appointed by the President, unless it be otherwise directed by the Board. A majority of the members of all Committees shall be a quorum, except as limited in article twenty-one.

172 The General Counsel.

26. The General Counsel, subject to the President and the Board of Directors, shall have general charge and supervision of the legal business of the Company.

The Secretary.

27. It shall be the duty of the Secretary to attend all meetings of the Board of Directors and of the Stockholders, and of the Executive Committee, and record the minutes of their proceedings in suitable books to be provided for that purpose, and of which he shall be the custodian. He shall give due and timely notice to the Directors of all regular and special meetings of the Board, and of meetings of Committees to the members thereof. He shall take charge of all reports, resolutions and papers, after they shall be acted upon or submitted to the Board, and also of all letters and papers pertaining to the general business of the Company, except the official bonds. He shall be the custodian of the seal of the Company, and it shall be his duty to affix the same to all such proper instruments as the Board or the President, or either Vice-President, may direct, or to allow the President or either Vice-President so to affix it. The Directors may, if they think proper, appoint an Assistant Secretary, who shall have his office in Richmond, and perform or assist in the performance of such of the above duties as they may prescribe.

28. The Stock Books shall be kept by the Secretary, and he shall also keep transfer books, on which he shall register all transfers of stock and of registered bonds, and the names and addresses of all the transferees, unless the Board of Directors should arrange for a transfer agency in New York, in which case the said stock books and other books in this section provided for shall be kept there, subject to the supervision of the Secretary.

The Treasurer.

29. The Treasurer shall have his office in Richmond. It shall be his duty, either in person or through competent and faithful assistants, cashiers or disbursing officers, to receive and disburse, under the direction of the Board, all moneys belonging or coming to the Company; to keep regular, full and true accounts of all receipts and disbursements, and to make detailed reports of the same to the Board of Directors at the regular meetings and at all other times when required.

30. The moneys and securities of the Company shall be kept in such bank or banks, or other depository or depositories, as the Executive Committee or the Board may from time to time direct.

31. No payment shall be made except upon a sufficient voucher duly certified or approved by the proper officer.

32. The Treasurer and all other officers and agents who shall receive or disburse moneys, or have custody of moneys or securities, shall give bonds, with sureties approved by the Board or by the Executive Committee, for the faithful discharge of their duties, and for the safe keeping and due delivery of the moneys, securities and other property of the Company committed to them or that shall come to their hands.

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33. The Directors may, if they think proper, appoint an Assistant Treasurer, who shall have his office at such place as they may direct,

and perform or assist in the performance of such of the above duties as they may prescribe.

Auditor.

34. The Auditor shall have direct charge of the general books and accounts of the Company; and it shall be his duty and he shall have power to enforce the system prescribed for keeping the same. He shall, on approval of the President or in his absence, of either of the three Vice-Presidents, prescribe the form of all payrolls, vouchers, accounts, reports and returns of every description required in his department, and also the time at which the same shall be rendered. It shall be his duty to examine the accounts of all officers and employees and to see that the proper returns are made of all receipts from traffic and other sources, and that correct vouchers are turned over to him for all disbursements for any purpose. There shall be returned to the Auditor, at such time in every month as he may prescribe, all bills and payrolls for the previous month, properly certified and made in detail. The Auditor shall approve and audit the same if found correct in every particular. But he shall not approve or audit any voucher or payroll unless it has been previously certified to by the head of the department in which it originated; and this approval will not be held to relieve him from the duty of exercising due caution and diligence in satisfying himself that the voucher or payroll is correct and duly authorized. And in case of doubt it shall be his duty to refer it back to the officer certifying the same; and if the information furnished is not satisfactory, he shall refer it to the President, or, in his absence to either Vice-President. He shall also be the custodian of all bonds of officials and agents of the company handling funds. The Auditor shall have the right to appoint and remove all necessary assistants or clerks in his department, subject to the approval of the President, or in his absence, of either Vice-President, and he shall be held responsible for the proper performance of their duties.

Amendments.

35. These By-Laws may be altered, amended, added to or repealed at any regular meeting of the Board of Directors by a vote of two-thirds of all Directors present, provided such two-thirds constitute a majority of all the Directors of the Company, and provided written or printed notice of the proposed alteration, amendment, addition or repeal shall have been given at a previous regular meeting or they may be altered, amended or added to or repealed, in like manner at any regular or special meeting, of which written or printed notice, stating the object of the meeting as above shall have been given or sent to each Director at least ten days previous to the time appointed for such special meeting; or they may be amended at any annual or general meeting of the stockholders by a vote of a majority in amount of all the shares.

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"SCHEDULE D."

AN ACT

AUTHORIZING THE PURCHASERS OF THE RICHMOND AND DANVILLE RAILROAD, THEIR ASSIGNS AND SUCCESSORS, TO BECOME AND BE A CORPORATION, TO ADOPT A NAME THEREFOR, AND TO POSSESS AND EXERCISE GENERAL POWERS; AND AUTHORIZING THE LEASING TO OR BY, AND THE CONSOLIDATION THEREWITH OF, OTHER CORPORATIONS.

[Approved February 20, 1894.]

Whereas, a certain suit in equity is now pending in the Circuit Court of the United States of America for the Eastern District of Virginia, wherein the Central Trust Company of New York is complainant, and the Richmond and Danville Railroad Company, a corporation created by and existing under the Laws of the State of Virginia, is defendant, in which suit it is sought to foreclose the consolidated mortgage, dated the twenty-second day of October, in the year one thousand eight hundred and eighty-six, and upon or about that day duly executed, acknowledged and delivered by said railroad corporation to said Central Trust Company of New York, and subsequently supplemented and confirmed by said railroad corporation by instruments dated November first, eighteen hundred and eighty-six, and April thirtieth, eighteen hundred and eighty-eight, respectively, in which suit also it is proposed to sell the whole of the mortgaged property and premises, being the rights, property, privileges and franchises of the said the Richmond and Danville Railroad Company;

And, whereas, it is deemed desirable and for the interest of this Commonwealth that the said railroad property shall be sold and reorganized in such manner and under such conditions as to secure the largest and best possible facilities and advantages of transportation and communication for the people of this State; now, therefore,

1. *Be it enacted by the General Assembly of Virginia,* that the purchaser or purchasers of the said mortgaged premises of the said the Richmond and Danville Railroad Company at the foreclosure sale thereof in the course of the said suit in equity, and such person or persons as he or they may associate with himself or themselves, shall forthwith be, and they hereby are, constituted a body politic and corporate by the name which they may select, as set forth in the conveyance of said mortgaged premises, or in any writing signed by him or them and recorded in the court in which
175 the said conveyance shall be recorded, and such new corporation shall have, possess and be invested with all the estate, right, title and interest in and to such railroad and other property, with their appurtenances, and all the franchises, rights and privileges had and possessed by the said Richmond and Danville Railroad Company to the same extent as a purchaser under sections twelve hundred and thirty-

three and twelve hundred and thirty-four of the Code of Virginia, and shall perform all the duties prescribed by said sections of said Code; provided, however, that said new corporation shall not be limited as to the amount or classification of its stock or bonds, except that the total amount of stock issued shall not exceed three hundred and fifty million dollars, and shall have no immunity from any lawful State, county or municipal taxation by reason of its former charter or any law heretofore exempting it from taxation.

2. Such purchaser or purchasers may associate with him or them any number of persons in the organization of the new corporation, which may create and issue its stock and its bonds secured by mortgage or otherwise, according to any plan adopted by such purchaser or purchasers, and filed as hereinafter provided.

3. It shall be the duty of such new corporation within six months after the conveyance to it of said mortgaged premises to execute a certificate in writing under its common seal attested by the signature of its President or Vice-President, referring to the sale and conveyance by which it shall have acquired title to such premises and the plan of organization adopted by the purchasers, the amount and classes or kinds of capital stock and mortgage bonds or other obligations authorized to be issued, and also specifying the name of such new corporation and of its President, and the number and names of its Directors, which certificate shall be filed in the office of the Secretary of the Commonwealth of Virginia, and a certified copy thereof shall be conclusive evidence of the existence of such new corporation.

4. In addition to its other powers, such new corporation shall have, and from time to time as occasion arises may exercise, the following powers, or any of them, namely:

(*a*) With the approval of a majority of its stockholders, given at a meeting, it may, from time to time, lease, use, operate, consolidate with, or purchase or otherwise acquire, or be leased, used, operated by, or consolidated with, any railroad or transportation company now or hereafter incorporated by the laws of the United States, or of any of the States thereof, or any one or more of such railroad or transportation companies, or any other railroad or transportation company or companies which now are or hereafter may be leased, or used, or operated by, or consolidated with any one or more of such railroad or transportation companies; and, from time to time, it may consolidate its capital stock, property and franchises, by change of name or otherwise, with the capital stock, property and franchises of any other railroad or transportation company, power being hereby granted to any railroad or transportation company or companies incorporated by or under any act or acts of the General Assembly of the State of Virginia, with the approval of a majority in amount of its or their shareholders respectively
176 given at a meeting, to make and carry out such contracts of consolidation or lease, sale or other method of acquisition; *provided* that, in all consolidations, a copy of the agreement therefor shall be filed in the office of the Secretary of the Commonwealth of Virginia, and that any corporation

with which said new corporation may consolidate, or which it may lease, shall be or remain subject to the jurisdiction of the courts of this State, and all lines of railroad operated by it in the State of Virginia shall be subject to the general laws of the State; and *provided, further,* that any stockholder who dissents from any such consolidation may within sixty days thereafter apply by petition to the Circuit Court of the City of Richmond to determine the value of his stock, and shall be entitled to receive from the new corporation the value as thus determined of such stock upon transfer thereof to the new corporation.

(*b*) It may from time to time purchase, own and hold bonds or other evidences of debt, and shares of the capital stock of any railroad company or companies formed under the laws of this or any other State, and from time to time may guarantee or assume the bonds, evidences of indebtedness or capital stock of any such railroad company.

(*c*) It may from time to time acquire or guarantee the stocks and bonds, or either, of any inland, coast or ocean transportation company or companies, operating to or from any point or points on its lines; and it may develop or aid in the development of its business by acquiring or guaranteeing the stocks and bonds, or either, of hotel, lighterage, wharf, elevating and other such enterprises convenient in connection therewith or as part thereof.

5. Said new corporation may issue its capital stock of one or more classes or kinds, and in one or more series or grades, with such preferences, conditions and voting power as shall be provided in said plan of organization, and from time to time it may increase or decrease the amount of any class or kind or grade of such stock as shall be provided in said plan of reorganization, or with the approval of a majority in amount of the stockholders, given at a meeting of stockholders called for that purpose, unless and except as otherwise expressly provided in certificates representing stock previously issued. The shares of each class of stock shall be of such par amount, and shall entitle the holders to such vote respectively as shall be determined in the said plan of reorganization or by the stockholders in like manner.

6. Such new corporation may borrow money and issue bonds or other evidence of indebtedness therefor, and may secure the same, from time to time, by mortgage or deed of trust upon any or all of its property and franchises, and such new corporation, from time to time, may issue and sell its bonds and its capital stock at such prices and on such terms as shall be specified in said plan of organization, or as a majority in amount of the stockholders shall approve at any meeting, and may receive in payment therefor property, securities or shares in any corporation mentioned in this act, and any stock so issued shall be deemed fully paid and free from any liability.

177 7. The business, property and concerns of said corporation shall be managed by a Board of Directors consisting of not less than five members, and one of their number shall be chosen as President. The stockholders may adopt by-laws for the government of the stock, property and concerns of the corporation, and for the regulation

of its directors, officers and agents, and in and by such by-laws the stockholders may prescribe how such by-laws may be amended or repealed; provided, however, that until such by-laws shall be adopted by the stockholders the corporation shall be governed by by-laws adopted in accordance with the plan of organization.

8. The principal office of the Company shall be in the City of Richmond, in this State, at which all meetings of the stockholders shall be held; and all other offices and workshops of said Company shall be located in the State of Virginia, as far as the same may be practicable.

9. It shall be lawful for the Circuit Court of the City of Richmond, upon the petition of the President and Board of Directors, at any time to order a change in the name of the Company; but any such change of name shall be without prejudice to the rights of any creditor, or to the exercise of any of the powers and privileges granted by this act.

10. There shall be paid to the Clerk of the county or corporation in which any mortgage authorized by this act may be presented for recordation, the existing rate of taxation for such recordation upon the assessed value of the road-beds, depots, station buildings and lots, and machine shops, fixtures and rolling stock, and any real estate not included in said enumeration, in the State of Virginia, conveyed in such mortgage; and upon presentation to the Clerk of the county or corporation where it is proposed to record said mortgage of a certificate of the Auditor of the State of the amount of the assessed values of the said property within the State of Virginia, and upon the payment of the tax thereon to the said Clerk, the said mortgage shall be recorded without other charge than the clerical fees provided in such cases. Certified copies of such mortgage may be recorded in any county of Virginia in which property covered by such mortgage may be located upon payment of clerical fees.

11. All taxes and debts due or to become due the State of Virginia by the corporation shall be paid in lawful money of the United States and not in coupons.

12. This act shall be in force from its passage.

February 28, 1894.

178 (A Copy.)

(Signed) J. BELL BIGGER,
Clerk of the House of Delegates and
Keeper of the Rolls of Virginia.

COMMONWEALTH OF VIRGINIA:

I, Chas. T. O'Ferrall, Governor of the Commonwealth of Virginia, certify that J. Bell Bigger, whose name is signed to the within copy of an Act of Assembly bearing date the 28th day of February, 1894, is and was at the time of signing Clerk of the House of Delegates and Keeper of the Rolls of Virginia, duly elected and qualified; that he is authorized by the laws of this State to make and sign such copy of an act, and that to all his official acts full faith, credit and authority are due and ought to be given.

In testimony whereof, I have hereunto set my hand as Governor, and caused the Great Seal of the State to be affixed. Done at the City of Richmond this 28th day of February, A. D. 1894, and in the one hundred and eighteenth year of the Commonwealth.

[GREAT SEAL OF VIRGINIA.]

(Signed) CHAS. T. O'FERRALL.

By the Governor:
(Signed) J. T. LAWLESS,
Secretary of the Comonwealth and Keeper of the Seals.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH AND KEEPER OF THE SEALS OF VIRGINIA.

RICHMOND, VIRGINIA,

COMMONWEALTH OF VIRGINIA:

I, , Secretary of the Commonwealth of Virginia, certify that the foregoing is a true copy of the certificate of the Southern Railway Company, a corporation created by and existing under an Act of Assembly of the State of Virginia, approved February 20, 1894, as mentioned in Section 3 of said Act, which certificate was duly filed in my said office on the 14th day of December, 1894.

Given under my hand and the lesser seal of the Commonwealth, at Richmond, this day of , A. D.

[SEAL.]

——— ———,
Secretary of the Commonwealth and Keeper of the Seals of Virginia.

179 AN ACT

TO PROVIDE FOR THE REDUCTION OF THE CAPITAL STOCK AND THE ISSUE OF SPECIAL STOCK OF THE SOUTHERN RAILWAY COMPANY.

Approved January 23, 1900.

Whereas, pursuant to the provisions of the Act of Assembly of the Commonwealth of Virginia, approved February twentieth, eighteen hundred and ninety-four, the purchasers of the Richmond and Danville Railroad did constitute themselves a body politic and corporate by the name of

Southern Railway Company;

and also as provided by said Act, within six months after making their purchase did adopt and did file in the office of the Secretary of the Commonwealth their certain plan of organization dated December fourth, eighteen hundred and ninety-four, whereby, among other things, they did certify that the said purchasers and the Southern Railway Company had fixed the capital stock of the corporation at one hundred and eighty million dollars, divided into one million eight hundred thousand shares, each of the par value of one hun-

dred dollars, of which six hundred thousand shares are preferred stock and the remainder are common stock, the corporation reserving the right to increase such capital stock up to, but not exceeding the limit authorized by the said act, approved February twentieth, eighteen hundred and ninety-four, and the right to increase or to decrease the amount of any class or kind or grade of its capital stock, and also to redeem and to purchase at par any and all preferred stock, or any kind, class or grade thereof; and further did certify that with the exception of one thousand shares of common stock theretofore issued or reserved to qualify Directors, or for other purposes, all of the stock of the Company had been duly issued and delivered to J. Pierpont Morgan, Charles Lanier and George F. Baker, and their successors, as Voting Trustees, under an agreement dated October fifteenth, eighteen hundred and ninety-four, with the exclusive right and privilege in said Voting Trustees, during the continuance of their trust as provided in said agreement, to vote upon and in respect of, all stock so issued to them, and also to collect and receive all dividends declared in respect of such stock, and to distribute any such dividends among the holders of their stock trust certificates, which holders in due course would be entitled to receive in exchange therefor certificates for corresponding amounts and kinds of the capital stock of the Southern Railway Company; and

Whereas, from time to time, the said corporation has issued stock certificates for the full amount of one million eight hundred thousand shares, each of the par value of one hundred dollars of which six hundred thousand shares are preferred stock, and one million two hundred thousand shares are common stock, all of which stock certificates (excepting those for such one thousand shares of common stock) have been duly issued to, and now are held by, the said Voting Trustees under the said Voting Trust Agreement dated October fifteenth, eighteen hundred and ninety-four; and

Whereas, in and by Section five of the said Act, approved February twentieth, eighteen hundred and ninety-four, it was provided that the said new company might issue its capital stock of one or more class or kinds and in one or more series or grades, with such preferences, conditions, and voting power as should be provided in said plan of organization; and from time to time might increase or decrease the amount of any class or kind or grade of such stock as should be provided in the plan of organization, or with the approval of a majority in amount of the stockholders given at a meeting of the stockholders called for that purpose, unless and except as otherwise expressly provided in certificates representing stock previously issued; and that the shares of each class of stock should be of such par amount, and should entitle the holders to such vote, respectively, as should be determined by said plan of organization, or by the stockholders in like manner; and

Whereas, no express provision concerning any increase or decrease of the common capital stock is contained in any outstanding certificate representing common stock, and it is deemed desirable for the interests of the Company and of the Commonwealth that the

nominal value of such common stock shall be reduced so as to conform more nearly to the market value thereof; *now, therefore,*

1. *Be it enacted by the General Assembly of Virginia:* That in the manner hereinafter provided, with the consent of holders of a majority of all outstanding stock of the Southern Railway Company, including at least a majority of outstanding common stock, the Board of Directors of the Company, from time to time in reduction of the amount of its stock, may issue one share of a new or special stock as hereinafter described, in lieu and instead of the issue of two shares of the stock authorized by said Act approved February twentieth, eighteen hundred and ninety-four, but not heretofore issued, or in exchange for every two shares of the common stock now outstanding that may be surrendered for that purpose and cancelled. The company may agree to pay a dividend or other cash sum in connection with such exchanges of outstanding common stock; the amount of such dividend or other cash sum to be fixed by the Board of Directors, and payment thereof to be made at such time and in such manner as in its discretion the board may determine. The consent hereunder of stockholders may be given either in writing or by vote at a meeting or by a combination of consents in writing or by vote.

2. Holders of stock trust certificates may authorize the Voting Trustees as holders of the corresponding amount of stock to consent to such reduction, and may confer any other authority upon the Voting Trustees by presentation of such certificates to the Voting Trustees, in order that a notation of such authority may be
181 stamped thereon. Such stamp on any stock trust certificate shall be conclusive proof that the holder thereof has given such authority, which shall bind all transferees of such certificate and of any interest thereby represented, and shall be irrevocable. In exchange for stock trust certificates stamped as aforesaid there shall be issued stock trust certificates either in the present form similarly stamped, or in a new form adapted to the conditions as altered under this Act.

3. If and when the holders of a majority of the outstanding stock, including such amount of the outstanding common stock (not less than a majority thereof) as shall be satisfactory to the Board of Directors, shall have consented to the reduction herein authorized, the company from time to time within such period or periods as shall be prescribed or extended by the Board of Directors, shall issue new certificate for one share (of the par value of one hundred dollars) of the special stock authorized by this Act in exchange for every two shares of outstanding common stock surrendered for that purpose; and as hereinbefore authorized, thereupon shall make payment of such dividend or other cash sum, if any, as it may have agreed to pay.

4. All such special stock, whether issued as herein permitted in lieu of authorized common stock, or in exchange for outstanding common stock, shall be distinguished by printing on or in the certificates to be issued therefor, a statement that such stock was issued under the provisions of this Act. Until more than ninety-five per

centum of the common stock then outstanding shall have been exchanged as herein permitted, and thereafter until otherwise determined by the Board of Directors, each share of such special stock shall entitle the holder thereof to receive the same dividends as though he were the holder of two shares of present common stock theretofore converted into such one share of special stock.

5. From time to time, in exchange for such amount of special stock as under this Act shall be issuable therefor the Voting Trustees may surrender to the company certificates for present common stock to the amount which by stamping or otherwise shall have been authorized by the holders of common stock trust certificates; and at the termination of the voting trust the holders of such stamped common stock trust certificates shall receive from the Voting Trustees, in lieu of the common stock so surrendered to the company and mentioned in such trust certificates special stock to the extent of one-half of such amount of such common stock. Any dividend or other cash sum that may be received by the Voting Trustees in connection with such exchanges of common stock shall be payable by them to the holders of the stamped common stock trust certificates at such time or times as the Voting Trustees may determine. After the termination of the voting trust, the Voting Trustees and the Board of Directors, upon such terms as they may deem expedient may make arrangements for the issue of special stock in redemption of unstamped common stock trust certificates then outstanding.

6. Nothing in this Act contained shall impair the existing and continuing right of the Southern Railway Company to in-
182 crease or to decrease its capital stock of any class or grade, whether preferred, special or common, under and in accordance with said Act of Assembly, approved February twentieth, eighteen hundred and ninety-four. With the approval of the holders of a majority of the capital stock, given at a meeting of the stockholders called for that purpose after the termination of the voting trust, the company may decrease the amount of its common stock to one-half the amount thereof by reducing the number of shares of common stock of one hundred dollars each then held by each stockholder to one-half of such number.

7. This Act shall be in force from its passage.

A true Copy.

Teste:

____ ____,

Clerk of the House of Delegates and
Keeper of the Rolls of Virginia.

Date

AN ACT

TO AMEND AND RE-ENACT SECTION 7 OF AN ACT APPROVED FEBRUARY 20, 1894, ENTITLED "AN ACT AUTHORIZING THE PURCHASERS OF THE RICHMOND AND DANVILLE RAILROAD, THEIR ASSIGNS AND SUCCESSORS, TO BECOME AND BE A CORPORATION, TO ADOPT A NAME THEREFOR, AND TO POSSESS AND EXERCISE GENERAL POWERS; AND AUTHORIZING THE LEASING TO OR BY, AND THE CONSOLIDATION THEREWITH OF, OTHER CORPORATIONS."

Approved February 26, 1902.

1. *Be it enacted by the General Assembly of Virginia:* That Section Seven of an Act, approved February twentieth, eighteen hundred and ninety-four, entitled "An Act authorizing the purchasers of the Richmond and Danville Railroad, their assigns and successors, to become and be a corporation, to adopt a name therefor, and to possess and exercise general powers; and authorizing the leasing to or by, and the consolidation therewith of, other corporations," be and hereby is amended and re-enacted to read as follows:

§ 7. The business, property and concerns of said corporation shall be managed by a Board of Directors consisting of not less than five nor more than fifteen members, and one of their number shall be chosen as President. The corporation, at a general meeting or at an annual meeting, may from time to time increase or decrease, within the limits hereinbefore fixed, the number of Directors to be elected at the next annual meeting, but in case of such increase or decrease, the number to be elected shall be specified in the notice of the meeting at which the election is to be held. By the vote of a majority of the stockholders present or represented at any general meeting or at any annual meeting, the corporation may
183 classify its Directors into three classes, as nearly as may be equal in numbers. In case such classification is made, the term of office of the Directors of the first class shall expire in one year, of the Directors of the second class in two years, of the Directors of the third class in three years, from the annual meeting at which the first Directors so classified are chosen under this Act and at each annual meeting thereafter, the Directors then to be elected shall be elected for three years. Every Director shall continue in office until the expiration of the term for which he was elected, and until his successor shall have been elected and shall have accepted his office.

All vacancies shall be filled and all Directors for whose election provision is not otherwise made in this Act, shall be elected in accordance with the by-laws. The stockholders may adopt by-laws for the government of the stock, property and concerns of the corporation, and for the regulation of its Directors, officers and agents, and in and by such by-laws the stockholders may prescribe how such by-laws may be amended and repealed, provided, however, that until otherwise voted by the stockholders, the corporation shall be governed by the by-laws of the Southern Railway Company, adopted

in accordance with the plan of organization of the Southern Railway Company filed in the office of the Secretary of the Commonwealth, dated December the fourth, eighteen hundred and ninety-four.

2. All acts and parts of acts inconsistent herewith are hereby repealed.

3. This Act shall be in force from its passage.

A true Copy.

Teste:

____ ____,

Clerk of the House of Delegates and Keeper of the Rolls of Virginia.

Date

COMMONWEALTH OF VIRGINIA:

I, , Governor of the Commonwealth of Virginia, certify that , whose name is signed to the within copies of Acts of Assembly of Virginia, approved, respectively, February 20, 1894, January 23, 1900, and February 26, 1902, bearing date the day of , , is, and was, at the time of such signing, Clerk of the House of Delegates and Keeper of the Rolls of Virginia, duly elected and qualified; that he is authorized by the laws of this State to make and sign such copies of Acts of Assembly of Virginia; that such attestation is in due form and by the proper officer, and that to all his official acts full faith, credit and authority are due and ought to be given.

And I further certify that whose name is signed to the within attestation of the Certificate of Southern Railway Company mentioned in Section 3, of the Act of Assembly 184 of Virginia, approved February 20, 1894, bearing date the day of , is and was, at the time of such signing, Secretary of the Commonwealth of Virginia, duly elected and qualified; that he is the keeper of the records in which said certificate is recorded, and that he is authorized by the laws of this State to make and sign such attestation; that such attestation is in due form and by the proper officer, and that to all his official acts full faith, credit and authority are due and ought to be given.

In testimony whereof, I have hereunto set my hand as Governor, and caused the Great Seal of the Commonwealth to be affixed.

Done at the City of Richmond, this day of , in the year of our Lord , and in the year of the Commonwealth.

BY THE GOVERNOR:

____ ____,

Secretary of the Commonwealth and Keeper of the Seals

EXHIBIT No. 2.

[House Bill 640—Senate Bill 25.]

AN ACT TO PROVIDE FOR THE ASSESSMENT OF REAL ESTATE OF RAILROAD COMPANIES IN THE STOCK-LAW TERRITORY FOR LOCAL BENEFIT.

The General Assembly of North Carolina do enact:

SECTION 1. That the North Carolina Corporation Commission shall assess the value of real estate belonging to any railroad company within stock-law territory in this State at the same time that they assess railroad property for general purposes.

SEC. 2. That every railroad company shall report to the Corporation Commission on blanks to be furnished by them, mileage of such railroad within the stock-law territory, width of right-of-way, weight of rails, value of rails and ties, number, description, and value of all structures within the stock-law territory, and all other information necessary to enable the Corporation Commission to ascertain the value of said real estate. That after assessment shall be made it shall not be changed until the year for the assessment of real property for general tax purposes, except that the Corporation Commission shall correct any assessment of real property on which any structure over one hundred dollars ($100) in value may have been erected, or on which any structure of like value may have been destroyed, as the value of said real estate may be affected thereby.

SEC. 3. This act shall be in force from and after its ratification.

SEC. 4. All laws in conflict with this act are hereby repealed.

In the General Assembly read three times, and ratified this the 8th day of March, A. D. 1907.

185 EXHIBIT No. 3.

[House Bill 1484—Senate Bill 1242.]

AN ACT TO PRESCRIBE THE HOURS OF SERVICE OF EMPLOYEES OF RAILROAD COMPANIES ENGAGED IN THE OPERATION OF TRAINS.

The General Assembly of North Carolina do enact:

SECTION 1. That it shall be unlawful for any railroad company doing business in the State of North Carolina, or for any officer, agent or employee thereof who has the direction of or control over any employee or agent of the classes mentioned below, to cause or knowingly permit or allow any employee belonging to any such class to render any service for such railroad company pertaining to the movement of trains, for a greater number of hours in any twenty-four hours than is hereinafter specified, to-wit:

(*a*) Any employee doing the work of a train dispatcher (or telegraph operator), having in charge in any degree the direction of the movement of any train or trains in North Carolina, for more than eight hours in any twenty-four hours: *Provided,* the Corporation Commission of North Carolina is hereby authorized to permit any such telegraph operator at any station on any road in this State to work for a longer time, not exceeding twelve hours in any twenty-four hours, where the said Corporation Commission shall determine that the safety of the traveling public will not be endangered by such extension of hours.

(*b*) Any conductor, flagman, engineer, brakeman, fireman or other member of any train crew, for more than sixteen hours in any twenty-four hours.

SEC. 2. That any railroad company, or officer or agent thereof, having the direction of or control over any employee mentioned in section one of this act, who shall violate any of the provisions hereof, shall be guilty of a misdemeanor, and upon conviction such railroad company shall be fined not less than five hundred dollars; and such officer or agent shall be fined or imprisoned, or both, in the discretion of the Court.

SEC. 3. That any train dispatcher or telegraph operator, having in charge in any degree the direction of the movement of any train or trains in North Carolina, who shall work more than eight hours in any twenty-four hours as an employee performing the duties aforesaid, except as shall be permitted by the Corporation Commission under the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the Court.

SEC. 4. Any conductor, flagman, fireman, engineer, brakeman, or other member of any train crew, who shall work for any railroad company more than sixteen hours in any twenty-four hours, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the Court: *Provided,*
that it shall not be held a violation of this act by any con-
186 ductor, brakeman, flagman, engineer, fireman or other member of any train crew who shall work more than sixteen hours in any twenty-four hours in order to clear the track or tracks of said railroad company from wrecks, washouts, or obstruction caused by the act of God, so that they may bring the train or trains operated by them to a station on said road, which station shall be either the schedule destination of said train or the station at which there is regularly a change of train crews; nor shall it be held a violation of this act by the corporation, officers or agents thereof, to permit the said conductor, flagman, brakeman, fireman, engineer or other member of a train crew to work overtime under the circumstances and conditions hereinbefore stated.

SEC. 5. This act shall be in force from and after its ratification.

In the General Assembly read three times, and ratified this the 8th day of March, A. D. 1907.

EXHIBIT No. 4.

[House Bill 1052—Senate Bill 1243.]

AN ACT TO AUTHORIZE THE CORPORATION COMMISSION TO REQUIRE RAILROADS TO ERECT AND MAINTAIN UNION DEPOTS IN TOWNS OF TWO THOUSAND INHABITANTS.

The General Assembly of North Carolina do enact:

SECTION 1. Wherever two or more railroads now, or hereafter may, maintain freight depots and a union passenger depot within one mile of a town of two thousand population for the convenience of the inhabitants thereof, and do not enter the corporate limits of the said town, it shall be the duty of the Corporation Commission, upon the petition of a majority of the qualified voters of the said town, which petition shall be properly sworn to by the signers thereof, to require and compel, where practicable, the said railroads to run their lines into or through the corporate limits of the said town, and construct, equip, and maintain suitable passenger and freight depots at some convenient place or places therein, and the passenger depot shall be a union station and be built and maintained by the several railroads according to a plan and in such a manner as shall be approved by the Corporation Commission.

SEC. 2. Whenever a petition shall be filed with the Corporation Commission as aforesaid, the said Corporation Commission shall set a day for the hearing thereof, which day shall be not more than twenty days from the filing of said petition, and shall immediately cause a notice to issue to the railroads interested in the matter set out in the petition, and after the hearing of the matter on the day named in the said notice, the said Commission, if a majority of its members shall deem it practicable, shall thereupon cause an
187 order to be made requiring the said railroads to build, equip, and maintain in a suitable manner, road-beds, yards, and depots, and any other necessary buildings or equipment, at convenient places within the limits of said town, as to a majority of them shall seem proper for the needs and growth of the business and inhabitants of the said town.

SEC. 3. The said order of the Corporation Commission to the said railroads shall name a time within which all the necessary work of entering the said town and construction of depots and other buildings shall be completed and opened to the public for the transaction of business, and the said railroads, for every day beyond the said time that they shall not be in operation according to the said order, shall pay the sum of fifty dollars for each and every day for such failure and neglect, to the Board of Commissioners or Aldermen of said town, which shall be for the benefit of the said town, this amount to be recovered as in other actions.

SEC. 4. This act shall also apply to any railroad that may hereafter enter into or run within one mile of the corporate limits of said town, and the Corporation Commission shall have the power to

require such railroads to unite with the other railroads in maintaining the depots, tracks, and other structures, and also pay such part of the cost thereof as to the said Corporation Commission may seem proper.

SEC. 5. The said railroads shall have the power to condemn such quantity of lands, including gardens, yards, residences and the premises pertaining thereto, as shall be necessary for the purposes of this act, the condemnation proceedings to be had in the same manner as now provided by the Revisal of one thousand nine hundred and five and amendments thereto.

SEC. 6. This act shall be in force and effect from and after its ratification.

In the General Assembly read three times, and ratified this the 11th day of March, A. D. 1907.

EXHIBIT No. 5.

[House Bill 2153—Senate Bill 256.]

AN ACT TO EXTEND AND ENLARGE THE POWERS OF THE NORTH CAROLINA CORPORATION COMMISSION.

The General Assembly of North Carolina do enact:

SECTION 1. That in addition to the powers already conferred upon and possessed by the North Carolina Corporation Commission it shall have power:

(*a*) To make any necessary and proper rules, orders and regulations for the safety, comfort and convenience of passengers, shippers or patrons of any public service corporation, and to require the observance of the same by the company and its employees.

188 (*b*) To require any railroad company to install and put in operation and maintain upon the whole or any part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road upon which is not operated as many as or more than eight trains each way per day.

(*c*) To require the raising or lowering of any track or highway at any highway crossing and to designate who shall pay for the same, and when they think proper, partition the cost of abolishing grade crossings and the raising or lowering of said track or highway among the railroads and municipalities interested.

SEC. 2. That section one thousand and sixty-six of the Revisal of one thousand nine hundred and five be amended by adding thereto the following: "and to require all transportation and transmission companies to establish and maintain all such public service facilities and conveniences as may be reasonable and just."

SEC. 3. That section one thousand and ninety-seven of the Revisal of one thousand nine hundred and five be amended by adding thereto subsections six and seven and eight, as follows:

(6) To require when practicable and when the necessities of the traveling public, in the judgment of the Corporation Commission,

demand, that any railroad in this State shall install and operate one or more passenger or freight trains over its road, and also require any two or more railroads having intersecting points to make close connection at such points: *Provided*, that no order under this act shall be made unless the business of the railroad justifies it.

(7) From time to time to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the public's safety and convenience; and if any are found by them to be unsafe, they shall at once notify and require the railroad company to put the same in repair.

(8) That all powers and duties in every respect conferred by law upon the Corporation Commission with respect to railroads and other transportation companies are hereby conferred upon said Corporation Commission to control and regulate telegraph, telephone and all other companies engaged in transmission of messages, in so far as they apply.

SEC. 4. That section one thousand and ninety-six of [the Revisal of] one thousand nine hundred and five be amended by inserting after the word "transmission" the words "and delivery," and by inserting after the word "telegraph" the word "company"; and by striking out the remaining part of said section and inserting in lieu thereof the following: "and to make just and reasonable rates of charges for the rental of telephones and furnishing telephonic communication by any telephone company or corporation."

SEC. 5. That section one thousand one hundred and ten be amended by inserting after the word "person," in the first line thereof, the words "or community," and by inserting after the word "discrimination," in the second line thereof, the words "or unjust or unreasonable rate," and by adding to said section the following: "The Corporation Commission shall have authority
189 to employ counsel whenever and for such periods of time as in their judgment it is necessary to do so, and counsel so employed shall be paid such fee and compensation as may be agreed upon by them."

SEC. 6. All persons and corporations affected by this act shall have the same right of appeal from the action of the Corporation Commission under the powers contained in this act as are now provided by law.

SEC. 7. That subsection nine of section two thousand five hundred and sixty-seven of the Revisal of one thousand nine hundred and five be and is hereby repealed.

SEC. 8. That this act shall be in force from and after its ratification.

In the General Assembly read three times, and ratified this the 11th day of March, A. D. 1907.

3. That in pursuance of the prayer of the said bill, on or about the 8th day of May, in the year 1907, a writ of subpœna was issued out of this Honorable Court and was duly served upon the said defendants Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, and Hayden Clement, the first three con-

stituting the Corporation Commission of North Carolina, and the others being respectively the Attorney General and Assistant Attorney General of said state, and at the same time this Honorable court issued a temporary restraining order, in the words and figures as follows, to-wit:

Restraining Order.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET AL., Defendants.

Upon reading the verified bill in this cause, and upon its being made to appear to the Court that there is danger of irreparable injury to the complainant from delay, unless the acts sought to be enjoined herein are restrained until a hearing upon the motion for an injunction in this cause, it is now ordered:

1. That the defendants, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them, individually and jointly, as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their agents and employees, be, and they hereby are, restrained and enjoined from preparing or publishing the tariff of rates,
190 charges and tolls mentioned in the fifth section of the act in the bill in this cause mentioned, entitled "An Act to prevent Unjust Discrimination in freight rates and to fix maximum charges therefor," ratified March 9, 1907, and hereinafter referred to as the act in respect to freight rates, and from classifying the railroads operating in North Carolina in accordance with, and from publishing, the rates fixed by an act of the General Assembly of North Carolina, in the bill in this cause mentioned, entitled "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," ratified March 2, 1907, and hereinafter referred to as the act in respect to passenger rates.

2. That the defendants, Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them, individually and jointly, as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their attorneys, agents and employees, and the defendants Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, their and each of their successors in office, and their and each of their attorneys, agents and employees are, and each of them is, hereby restrained and enjoined from taking any steps in pursuance of said act in respect to freight rates, or of said act in respect to passenger rates, or of any of the laws of the State of North Carolina, either directly or by or through any other attorney, agent

or employee, or otherwise, and either by any suit, prosecution or proceeding, civil or criminal, or otherwise from enforcing, or endeavoring to put into effect, or to force the complainant, or any of its officers, agents or employees to put into effect, the said act in respect to freight rates, or the said act in respect to passenger rates or any part of either of said acts, or the penalties prescribed, or provided for, in either of said acts, or any other penalties or punishments against the complainant Southern Railway Company, or against any of its officers, agents or employees, for failure to put into effect or to observe on any of the lines of said complainant in North Carolina the freight rates or the passenger rates prescribed in said acts, or for failure to comply with either of said acts or any provision thereof.

3. That all other individuals, persons or corporations are, and each of them is, hereby restrained and enjoined from instituting or prosecuting any suit or prosecution or other proceeding, either civil or criminal, against said complainant, or against any officer, agent or employee of said complainant, for the recovery of any damages or overcharges, or for the recovery or imposition of any penalty
191 or punishment under or by virtue of said act in respect to freight rates or the said act in respect to passenger rates, or under or by virtue of any law of North Carolina because of, or growing out of, the failure of said complainant or any of its officers, agents or employees to put into effect, or to observe on any of the lines of the complainant in North Carolina the freight rates or the passenger rates prescribed in said acts, or to comply with any of the provisions of either of said acts.

4. That the defendants, and each of them, show cause before this court in the United States Court Room at Asheville, N. C., at ten o'clock a. m. on Wednesday, the 26th day of June, 1907, why an injunction *pendente lite*, as prayed in the bill, should not be issued, and that a copy of this order be served as soon as practicable upon each of the defendants.

5. That this restraining order shall be in force and effect from the date hereof, and until the determination of the complainant's motion for an interlocutory injunction herein; provided, however, that upon the failure of the complainant, or some one for it, to execute, within ten days from this date, a bond in the penalty of Ten Thousand dollars, payable to the defendants with surety approved by one of the judges of this court, and conditioned substantially as hereinafter mentioned, the said restraining order shall stand dissolved. The condition of said bond shall be substantially as follows:

"The condition of the above obligation is such that

Whereas a restraining order has been made in the above entitled cause by the terms of which the defendants, and each of them, are restrained, until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done, certain acts mentioned in said restraining order; now should said restraining order be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, then that the above named Southern Railway Company shall pay, or cause

to be paid, all damages caused by the issue of said restraining order and the costs of this cause in connection therewith."

6. That, if for any reason the determination of the motion for an injunction *pendente lite* be not made until after July 1, 1907, the date fixed in the Acts of the General Assembly of North Carolina for the rates thereby prescribed to go into effect, then the complainant shall, prior to that date, apply to this court, or a judge thereof, for an order directing the giving of a bond by the complainant as prayed for in the twelfth paragraph of the bill in this cause, to secure the payment into the registry of this court, in case the said Acts of Assembly herein complained of are in this cause
192 finally declared valid and constitutional, of the excess which the complainant may receive on business covered by said Acts, over the amount it would have been entitled to receive on the basis of charges prescribed by the said Acts.

This May 8th, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

And thereupon came the above named complainant and filed the bond as provided in this order, which bond was this day approved by a Judge of this court as a full compliance with the provision thereof requiring the giving of a bond.

May 8, 1907.

[SEAL.]

J. C. PRITCHARD,
United States Circuit Judge.

Received at Raleigh, N. C., May 9, 1907, and executed this day by delivering a copy of within Restraining Order to Franklin McNeill, Samuel L. Rogers & Eugene C. Beddingfield, at their office, Raleigh, N. C. and on May 10, 1907, executed upon Robert D. Gilmer & Hayden Clement by delivering a copy of within Restraining Order to Miss Sarah Burkhead, Stenographer of said parties, at office of Attorney General, Raleigh, N. C.

CLAUDIUS DOCKERY,
U. S. Marshal,
Per P. A. MITCHELL,
Office Deputy Marshal.

Restraining Order Bond.

In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET ALS., Defendants.

Know all men by these presents that
Southern Railway Company, a corporation of the State of Virginia, the principal office of which is in the City of Richmond in

said State, as principal, and The United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto the defendants, Franklin McNeill, Samuel L. Rodgers, Eugene C. Bed-
193 dingfield, Robert D. Gilmer, and Hayden Clement in the just and full sum of Ten thousand dollars, for the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, and each of our successors, firmly by these presents,

Sealed with our seals and dated this 8th day of May, in the year 1907;

The condition of this obligation is such that whereas a restraining order has been made in the above entitled cause by the terms of which the defendants, and each of them, are restrained until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done, certain acts mentioned, in said restraining order, now should said restraining order be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, then, if the above named Southern Railway Company shall pay, or cause to be paid, all damages caused by the issue of said restraining order, and the costs in this cause in connection therewith, then this obligation to be null and void, otherwise to be and remain in full force and effect.

In testimony whereof the parties hereto have caused these presents to be duly signed in their respective names and their respective seals to be hereunto affixed, duly attested, this eighth day of May in the year 1907.

SOUTHERN RAILWAY COMPANY,
[SEAL.] By A. B. ANDREWS, *First Vice-President.*

Attest:
GEO. R. ANDERSON,
Assistant Secretary.

THE UNITED STATES FIDELITY
AND GUARANTY COMPANY,
By E. LESLIE SPENCE, JR.,
[SEAL.] *Attorney in Fact.*

Approved as a full compliance with the provision of the restraining order entered in this cause on the 8th day of May, 1907, requiring the giving of a bond

J. C. PRITCHARD,
U. S. Circuit Judge.

4. Your complainant showeth that the said restraining order and notice to show cause why an injunction *pendente lite* as prayed in the bill should not be issued was made returnable on the 26th day of June, 1907, at the court room of this Honorable Court in
194 the city of Asheville, and that on the said day this complainant and the said defendants in the said original bill named, duly appeared by counsel before his Honor, Jeter C. Pritch-

ard, United States Circuit Judge, and one of the Judges of this Honorable Court, and that after a full hearing and full argument this Honorable Court took jurisdiction of the said cause and entered an order granting an interlocutory injunction herein, which said order and interlocutory injunction were in the words and figures as follows:

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, Defendants.

Before Honorable J. C. Pritchard, Judge of said court.

In pursuance of the order to show cause, made herein on the eighth day of May, 1907, by which the said defendants were ordered to appear in the United States court room at Asheville, North Carolina, at ten o'clock A. M. on Wednesday, the twenty-sixth day of June, 1907, to show cause, if any they had or could show, why an injunction *pendente lite*, as prayed in the bill, should not be issued, the defendants appeared in the said court room at the time mentioned and filed their answer in writing to the said bill, and thereupon the complainant moved before the judge of this court for an interlocutory injunction as prayed in the said bill, and the said motion was heard upon the bill of complaint in this cause, and answer thereto, treated as affidavits, and upon the affidavits filed herein by the complainant, and the said motion was argued by counsel.

And the same having been fully considered, it is now ordered:

1. That until the further order of the court herein, the defendants, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually, and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their agents and employees, be, and they hereby are, enjoined and restrained
195 from preparing or publishing the tariff of rates, charges and tolls mentioned in the fifth section of the act in the bill in this cause mentioned, entitled "An Act to prevent unjust discrimination in freight rates and to fix the maximum charges therefor," ratified March ninth, 1907, and hereinafter referred to as the "Act in respect to freight rates," and from classifying the railroads operating in North Carolina in accordance with, and from publishing the rates fixed by, an act of the General Assembly of North Carolina in the bill in this cause mentioned, entitled "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," ratified March second, 1907, and

hereinafter referred to as the "Act in respect to passenger rates," and from naming and designating the ticket offices in North Carolina at which mileage books good on a line of this complainant shall be kept on sale.

2. That until the further order of the court herein, the defendants Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually, and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their attorneys, agents and employees, and the defendants Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, their and each of their successors in office, and their and each of their attorneys, agents and employees, are, and each of them is, hereby restrained and enjoined from taking any step or steps, in pursuance of said Act in respect to freight rates, or of said Act in respect to passenger rates, or of any of the laws of the State of North Carolina, either directly, or by or through any other attorney, agent or employee or otherwise, or by any suit, prosecution or proceeding, civil or criminal, or in any other manner, for the purpose of enforcing or endeavoring to put into effect as against the complainant or any of its officers, agents or employees, or to force the complainant, or any of its officers, agents or employees to put into effect, said Act in respect to freight rates, or the said Act in respect to passenger rates, or any part of either of said acts, or the penalties prescribed, or provided for, in either of said acts, or any other penalties or punishments against the complainant, Southern Railway Company, or against any of its officers, agents or employees for failure to put into effect, or to observe, on any of the lines of the said complainant in North Carolina the freight rates, or the passenger rates, prescribed, or provided for, in said acts, or either of them, or for failure to comply with either of said acts, or with any provision of either of them.

196 3. That, until the further order of the court herein, all other individuals and corporations are, and each of them is, hereby restrained and enjoined from instituting, or prosecuting, any suit or prosecution or other proceeding, either civil or criminal, against said complainant, or against any officer, agent or employee of said complainant, for the recovery or imposition of any penalty or punishment, under or by virtue of said Act in respect to passenger rates, or the said Act in respect to freight rates, or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of the said complainant, or any of its officers, agents or employees, to put into effect, or to observe, on any of the lines of the complainant in North Carolina the freight rates or the passenger rates prescribed in said acts, or in either of them, or to comply with any of the provisions of either of said acts, or for the recovery of any damages or overcharges, because of, or growing out of, any such failure, or for the enforcement of any claim, alleged right or cause of action, growing out of, or connected with, any such failure.

4. That said complainant, or some one for it, shall, before a judge of this court, or the clerk thereof, execute a bond in the penalty of

three hundred and twenty-five thousand dollars, with surety to be approved by such judge, or by such clerk, conditioned to pay into the registry of this court, from time to time, when and as the court may so order, such sum or sums of money as shall be equal to the difference between the aggregate freight and passenger rates and excess baggage charges charged and received by it for intrastate services on its lines in the State of North Carolina, and what would have been the aggregate amount for such services at the rates fixed in or under the said Acts of Assembly, and further conditioned that, whereas an interlocutory injunction has been issued in the above entitled cause, by the terms of which the defendants, and each of them, are restrained until the further order of the court, as from said order will appear, now, should such interlocutory injunction be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, then that the complainant shall pay, or cause to be paid, all damages caused by the issue of such interlocutory injunction and the cost of this cause in connection therewith.

5. That the complainant shall give to any person purchasing a ticket for intrastate travel on its lines in the State of North Carolina, and to any person purchasing a mileage book for travel on its lines in North Carolina, but not good outside of said state, a transferable coupon, or other written or printed evidence, representing the sum which such person, or his transferee, will, upon a final decision
197 in this cause upholding the validity of said Act in respect to passenger rates, be entitled to receive, out of the cash deposit to be made in the registry of this court in pursuance of the obligation of the bond hereinbefore mentioned. The form of said coupon, or of other written or printed evidence, shall be substantially as follows:

"SOUTHERN RAILWAY COMPANY.

"*North Carolina Ticket Claim Coupon.*

"To be Retained by Passenger. Not Good for Passage.

"Issued under an order of the Circuit Court of the United States for the Eastern District of North Carolina, in a suit therein pending between Southern Railway Company, Complainant, and Franklin McNeill *et al.*, Defendants.

"Southern Railway Company has, on the date stamped hereon, received in connection with the sale of the ticket of corresponding form and number, the rate designated in the tariff of this Company in effect on date of sale, for travel between points designated in such ticket within the State of North Carolina to which ticket this coupon is attached. This coupon is evidence only of a claim for the difference between the amount received and what would have been the amount if the distance covered by said ticket had been paid for at the rate fixed by North Carolina Act, approved March 2d, 1907, prescribing maximum passenger charges, and is payable only on the order and out of the registry of said court, upon surrender to

the court of this coupon, and upon such conditions, if any, as said court may impose, provided it should be finally determined in said suit that the said claim is entitled to such payment.

"In case the ticket with which this coupon corresponds is presented for redemption it must be presented at General Passenger Agent's office, Washington, D. C., accompanied by this coupon, either for surrender or for appropriate notation."

And the complainant shall give to any person checking baggage to be carried by the complainant between two points both of which are in the State of North Carolina, and which does not pass out of the state en route, and who has paid to the complainant any charge thereon for excess baggage, a transferable coupon or other written or printed evidence, representing the difference between the amount so paid and what would have been paid if there had been an allowance to such person of two hundred pounds of baggage as provided in said Act in respect to passenger rates, such difference to be payable to such person or to his transferee, upon a final decision in this cause upholding the validity of such Act in respect to pas-
198 senger rates, out of the cash to be deposited in the registry of this court, in pursuance of the obligation of the bond hereinbefore mentioned; such coupon, or other written or printed evidence, shall be substantially in the following form:

"SOUTHERN RAILWAY COMPANY.

"Issued by Southern Railway Company.

"North Carolina Excess Baggage Check.

"*North Carolina Excess Baggage Claim Coupon.*

"To be Retained by Passenger.

"Issued under an order of the Circuit Court of the United States for the Eastern District of North Carolina, in a suit therein pending between Southern Railway Company, Complainant, and Franklin McNeill *et al.*, defendants.

"Southern Railway Company has received, in connection with the issuance of excess baggage check of corresponding form and number, the amount computed from the excess baggage tariff of this company in effect on July 1, 1907, for the transportation of the passenger's baggage in excess of 150 pounds in weight, between the points designated in such excess baggage check within the State of North Carolina, to which excess baggage check this coupon is attached.

"This coupon is evidence only of a claim for the difference between the amount received and what would have been received, had there been an allowance to the passenger of 200 pounds of baggage, as provided in the North Carolina Act, approved March 2, 1907; and is payable only on the order, and out of the registry of said

court, upon surrender to the court of this coupon, and upon such conditions, if any, as said court may impose, provided it should be finally determined in said suit that the said claim is entitled to such payment."

But nothing herein contained shall be construed as requiring the complainant to issue any such coupon, or any such other written or printed evidence, in connection with the sale of any mileage book, or any ticket, good for an interstate passage or for passage in another state or in other states.

6. That the complainant shall preserve to be produced whenever so ordered by the court herein all canceled tickets and excess baggage check stubs in respect to which such coupons or other written or printed evidence may have been issued, and may be outstanding, and shall from time to time report to the court,
199 at intervals to be fixed by an order of the court herein, statements showing the revenue by it charged and collected for its services in the North Carolina intrastate transportation of passengers, baggage and freight in excess of the amounts permitted by said Act in respect to passenger rates and said Act in respect to freight rates. As to each of such shipments of freight the complainant shall report the name of the shipper, the date and place of shipment, and the amount of such excess. The complainant shall from time to time give such further bond or bonds as the court may require to secure the proper payment into the registry of the court of all the amounts which finally it shall be adjudged that it should so pay, under the final decision in this cause.

7. If it shall be determined herein that the complainant is entitled to the amounts covered by said bond, or bonds, then said bond, or bonds, shall be released and canceled by the court, and if any amount shall have then been paid into the registry of the court pursuant thereto, then, upon such determination in favor of the complainant, the sum, or sums, so paid into the registry shall be repaid to the complainant without further order of the court herein.

8. Leave is hereby granted to the complainant, if it be so advised, to make, by supplemental process, as new parties defendant, any person or corporation, attorney or solicitor, who may attempt or threaten to assert, or enforce, against the complainant or against any of its officers, agents or employees any alleged right, remedy, penalty or punishment, under either of said acts or otherwise, because of the failure of the complainant, or of any of its officers, agents or employees, to put into effect, or to observe, any rate prescribed in said Act in respect to passenger rates, or in said Act in respect to freight rates, or any other provision of said acts, or either of them.

9. That the restraining order heretofore granted in this cause shall be construed as remaining in full force and effect until this interlocutory injunction shall take effect.

10. It is further ordered that a writ of injunction shall forthwith issue in accordance with this order.

11. The defendants, having by counsel in open court stated that they regard the answer filed on the said motion for an interlocutory

injunction as their answer in this cause, and having given their consent that the same shall be so considered, and that the complainants shall forthwith file a replication thereto, and that the said cause shall be considered at issue, it is now ordered that it be referred to the Honorable W. A. Montgomery, Standing Master of this court for the Eastern District of North Carolina, to take and to the court report such evidence on any of the issues herein as either party may
200 offer, and to make all needed computations, and report fully to the court the facts thereon; that for that purpose the Master shall have the right to sit from time to time in the City of Washington and at any point he may elect in the State of North Carolina or elsewhere, for the purpose of facilitating the taking of the said evidence, and the said hearing before him, and that he shall report to the court the said evidence and his findings thereon not later than the 25th day of September, 1907. The said Master shall determine what time is to be allotted to the complainant for the taking of its evidence and what time shall be allotted to the defendants for the taking of their evidence.

This cause, by consent of the parties hereto given in open court, is set down for hearing before this court in the City of Asheville on the first Monday of October, in the year 1907.

12. Thereupon the complainant tendered its bond to comply with the provisions in respect to a bond in this order duly executed by the complainant as principal, and by the United States Fidelity & Guaranty Company, as surety, which said bond and the execution thereof and the surety thereto are approved.

J. C. PRITCHARD,
United States Circuit Judge.

June 29, 1907.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, Defendants.

The President of the United States of America to Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, and Hayden Clement, and to all other individuals and corporations, their and each of their attorneys, agents, and employees, Greeting:

The honorable Judge of the Circuit Court of the United States for the Eastern District of North Carolina, sitting in vacation, having, on the 29th day of June, 1907, after due notice and hearing, ordered that an injunction issue as herein stated, therefore:

201 1. Until the further order of the court herein, the defendants, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually and jointly as constituting

the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their agents and employees, are, and each of them is, hereby enjoined and restrained from preparing or publishing the tariff of rates, charges and tolls mentioned in the fifth section of the Act in the bill in this cause mentioned, entitled "An Act to prevent unjust discrimination in freight rates, and to fix the maximum charges therefor," ratified March ninth, 1907, and hereinafter referred to as the "Act in respect to freight rates," and from classifying the railroads operating in North Carolina in accordance with, and from publishing the rates fixed by, an act of the General Assembly of North Carolina in the bill in this cause mentioned, entitled "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," ratified March second, 1907, and hereinafter referred to as the "Act in respect to passenger rates," and from naming and designating the ticket offices in North Carolina at which mileage books good on a line of this complainant shall be kept on sale.

2. Until the further order of the court herein, the defendants Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually, and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their attorneys, agents and employees, and the defendants Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, their and each of their successors in office, and their and each of their attorneys, agents and employees, are, and each of them is, hereby restrained and enjoined from taking any step or steps, in pursuance of said Act in respect to freight rates, or of said Act in respect to passenger rates, or of any of the laws of the State of North Carolina, either directly, or by or through any other attorney, agent or employee or otherwise, or by any suit, prosecution or proceeding, civil or criminal, or in any other manner, for the purpose of enforcing or endeavoring to put into effect as against the complainant or any of its officers, agents, or employees, or to force the complainant, or any of its officers, agents or employees to put into effect, said Act in respect to freight rates, or the said Act in respect to passenger rates, or any part of either of said acts, or the penalties prescribed, or provided for, in either of said acts, or any other penalties or punishments against the com-
202 plainant, Southern Railway Company, or against any of its officers, agents or employees for failure to put into effect, or to observe, on any of the lines of the said complainant in North Carolina the freight rates, or the passenger rates, prescribed, or provided for, in said acts, or either of them, or for failure to comply with either of said acts, or with any provision of either of them.

3. Until the further order of the court herein, all other individuals and corporations are, and each of them is, hereby restrained and enjoined from instituting, or prosecuting, any suit or prosecution or other proceeding, either civil or criminal, against said complainant, or against any officer, agent or employee of said com-

plainant, for the recovery or imposition of any penalty or punishment, under or by virtue of said Act in respect to passenger rates, or the said Act in respect to freight rates, or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of the said complainant, or any of its officers, agents or employees, to put into effect, or to observe, on any of the lines of the complainant in North Carolina the freight rates or the passenger rates prescribed in said acts, or in either of them, or to comply with any of the provisions of either of said acts, or for the recovery of any damages or overcharges, because of, or growing out of, any such failure, or for the enforcement of any claim, alleged right or cause of action, growing out of, or connected with, any such failure.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Raleigh in the State of North Carolina, this 29th day of June, 1907.

H. L. GRANT, *Clerk*,
[SEAL.] By GEO. L. TOUNOFFSKI, *D. C.*

A true copy.
Attest:
H. L. GRANT, *Clerk*,
By GEO. L. TOUNOFFSKI, *D. C.* [SEAL.]

Recd. & served July 1, 1907, upon Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield by delivering to each of them personally a copy of this order. Service could not be made upon R. D. Gilmer and Hayden Clement for the reason that neither of them could be found in this District. The office of the Attorney General being closed and no clerk or stenographer in the City.

CLAUDIUS DOCKERY, *U. S. M.*
By J. F. SHARP, *O. D. M.*

Fees $6.00.

5. Your complainant further showeth that since the filing of the original bill in this cause and since the issuing of the injunction *pendente lite*, against the Corporation Commission, the body charged under the laws of the State of North Carolina with fixing just and reasonable rates which this complainant may charge for transporting passengers over its lines, and after this Honorable Court had taken jurisdiction of the subject matter, the defendant J. A. Spence, as attorney at law of the other defendants, J. R. McKenzie, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong,
203 L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong and Guy Smitherman, the last four being infants under the age of twenty-one years, and J. M. Way as the next friend for the said infants, and the said defendants just above mentioned, through their attorney J. A. Spence, instituted suits against your complainant in the Superior Court of Randolph County in the State of North Carolina, seeking to recover penalties or damages because this complainant sold tickets for passage in North Carolina upon the terms

authorized by said injunction order, and because of the alleged failure of your complainant to sell tickets good over its lines at the rate of two and one quarter cents per mile, being the rates named in the said act ratified March 2, 1907, and entitled "An act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," and the said E. B. Hatch through his attorney Elijah Moffitt, instituted a similar action in said Superior Court of Randolph County, to recover similar penalties; that all of said suits are returnable to the next regular term of the said Superior Court of Randolph County which convenes on the 15th day of July 1907; that thereupon this complainant filed in the Circuit Court of the United States for the Eastern District of North Carolina its supplemental bill of complaint against the above named defendants, which said supplemental bill is in words and figures as follows:

204 In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,

v.

FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, Defendants.

In Equity.

Supplemental Bill.

To the Honorable Judges of said Court:

The supplemental bill of complaint of Southern Railway Company, a corporation of the State of Virginia, duly organized and existing under and by virtue of the laws of that State, having its principal office in the city of Richmond, and the State of Virginia, and being a citizen of said State, against J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, and Jesse Eldridge, Claude Howell, Wallace Armstrong, and Guy Smitherman, the last four being infants under the age of twenty-one years, J. M. Way, and B. C. Beckwith, defendants.

And thereupon your complainant says:

1. That on the eighth day of May, 1907, your complainant exhibited its original bill of complaint in this honorable court against Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, who constitute the Corporation Commission of North Carolina, Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General of said State, defendants, all of said defendants being citizens of the State of North Carolina.

2. And your complainant alleged in its said original bill that it was duly incorporated and organized into a railroad corporation under an act of the General Assembly of the State of Virginia, approved February 20, 1894; that by the terms of its charter it was authorized to own, operate and control lines of railroad in other states as well as in Virginia; that under and by virtue of such powers and by virtue of due authority from the states about to be
205 mentioned, the complainant owns, controls and operates, and continuously since its said organization has operated and controlled, lines of railroad (in addition to those which it owns, operates and controls in the State of Virginia) in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Indiana, and Illinois; and that the complainant is, and continuously since its organization has been, engaged in doing an intrastate business as a common carrier of freight and passengers in the State of North Carolina, and in addition is, and continuously since its organization has been, engaged in doing, as such common carrier, a large interstate business in North Carolina, and in and between said state and the other states aforesaid, and other states of the United States, and in and between other states and territories of the United States, and also is, and since its said organization has been, engaged in said state and the other states aforesaid in foreign commerce.

3. And your complainant alleged in its said bill that the effect of two certain acts passed by the General Assembly of North Carolina at its recent session, one of said acts being entitled "An Act to prevent unjust discrimination in freight rates and to fix the maximum charges therefor," hereinafter styled "Act in respect to freight rates," which said act was ratified on the ninth day of March, 1907, and the other of said acts being entitled "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," hereinafter styled "Act in respect to passenger rates," which said act was ratified on the second day of March, 1907, would, whether taken separately or together, if enforced, be to deprive your complainant of its property without just compensation and without due process of law, and to deny to it the equal protection of the laws, contrary to the fourteenth amendment to the Constitution of the United States, the benefit and protection of which your complainant in said bill specially set up and claimed, in that the effect of the said acts, and each of them, would be to deprive this complainant of its right to receive a fair and reasonable return upon the value of the property employed by it in the public intrastate service in the State of North Carolina, and to deprive it of the right to charge and receive its present rates in North Carolina, which are legal and not higher than a fair and reasonable compensation for the services rendered by it to the shippers and to the travelers upon its lines in the said State, and would also deprive your complainant of its right to increase its charges, whether freight or passenger, whenever under the circumstances then exist-
206 ing, the said charges are less than a reasonable compensation for the service which it renders.

4. And your complainant alleged in its said original bill that the requirements of the said acts, and each of them, would constitute a regulation of, and burden upon, interstate commerce, contrary to the commerce clause of the Constitution of the United States, in that the effect of the establishment of the rates and charges prescribed by, or provided for in, the said acts or either of them, and other requirements of the said acts or either of them, would be to inevitably affect the interstate rates of this complainant and would compel this complainant to give an undue preference to intrastate shippers and passengers in North Carolina, and subject to undue prejudice and disadvantage interstate shippers and passengers in the said State, and other states, and intrastate shippers and passengers in such other states.

5. And your complainant alleged in its said original bill that the effect of the provisions of Section 3 of the said act in respect to passenger rates, requiring that mileage books of one thousand miles in each book shall be kept on sale at such railroad ticket offices in North Carolina as shall be named and designated by the Corporation Commission of North Carolina, and that when any such mileage book is purchased it shall be good in the hands of any person or persons named therein on all railroads on which the fare is the same as, or less than, the fare on the road of the company selling such mileage book; and that when the mileage is detached from said book by any other railroad than the one which sold it, the said mileage shall be redeemable on demand by the railroad which sold it, is to deprive your complainant of the proper use of its property without due process of law, and to deny to it the equal protection of the laws, in that the effect of the provisions of the said section is to require the complainant to accept and carry out the contracts of other railroad companies as embraced in said milage book tickets, and to permit some other railroad company to collect money for the price of transportation which this complainant will be required to furnish, and moreover to constitute this complainant, without its consent, the agent of other railroad companies for the purpose of sale of tickets and the receipt and accounting for the price thereof, and, if such be the proper interpretation of the provisions of the said act, to redeem the mileage books of other carriers without reference to the length of time the same might be outstanding.

207 6. Your complainant further alleged in the said bill that the effect of the provisions of the said act in respect to freight rates making a rule for some railroads different from that made for the complainant, in respect to their freight rates and in respect to demurrage charges, and of the provisions of the act in respect to passenger rates making a difference in rates in favor of roads in said state whose mileage is sixty miles or under, over other railroads, and in favor of railroads constructed within twelve months preceding the first day of January, 1907, or at that time in course of construction, and such railroads as may be constructed within two years from January 1, 1907, over other railroads, is to deprive this complainant of the equal protection of the laws, contrary to the fourteenth amendment to the Constitution of the United States,

the benefit and protection of which this complainant again specially set up and claimed, in that the effect of the said provisions is to make a difference in the classification of the railroads operating in North Carolina, and to permit one carrier to charge for the same service in North Carolina a greater sum than is permitted to another carrier in North Carolina, without any reasonable basis for such difference in classification.

7. And your complainant alleged in its said bill that this suit is a controversy between citizens of different states and that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of $2,000, and that this suit involves questions arising under the Constitution of the United States, and rights asserted by the complainant under said constitution and protected hereby.

8. And in said bill it was alleged that, by the above mentioned act in respect to freight rates, it is provided that any railroad company doing business in the State of North Carolina, or officer or agent thereof, who shall make charges for shipments of freight in violation of the provisions of said act shall be deemed guilty of a misdemeanor, and such corporation shall, upon conviction, be fined not less than one hundred dollars, and such officer or agent shall be fined or imprisoned, or both, in the discretion of the court; and that by the said act in respect to passenger rates it is provided that any railroad company violating any of the provisions of the act shall be liable to a penalty of five hundred dollars for each violation, payable to the person aggrieved by such violation, recoverable in an action to be instituted in the name of said person in any court of North Carolina having competent jurisdiction thereof, and that any agent, servant or employee of any railroad company violating said
208 act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned, or both, in the discretion of the court.

9. And complainant alleged in its said original bill that by means of these enormous penalties an effort is made to prevent inquiry into the validity of the above mentioned acts, and to so burden any challenge thereof in the courts that your complainant must necessarily submit rather than take the chances of the penalties imposed, and that, therefore, the effect of said penalties and of the legislation which imposes them is a denial to your petitioner of due process of law, and, since no other person or business in North Carolina is subjected to such penalties under the same circumstances, is to deprive your petitioner of the equal protection of laws, contrary to the fourteenth amendment to the Constitution of the United States.

10. And your complainant alleged in the said original bill that the defendants, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constitute the Corporation Commission of the State of North Carolina, and that the defendant, Robert D. Gilmer, is the Attorney General and the defendant Hayden Clement, Assistant Attorney General, of the said state, and that all of said defendants have their offices in the city of Raleigh, in the State of North Carolina, and the defendants, Franklin McNeill, Eugene C. Beddingfield, and Robert D. Gilmer, are inhabitants of, and reside in, the Eastern Dis-

trict of North Carolina, and that all of said defendants are specially charged by the laws of North Carolina with certain duties in connection with the putting into effect of the acts above mentioned, and the enforcement thereof.

11. And your complainant alleged in its said original bill that it would be irremediably injured unless this honorable court should grant to it the relief, which was prayed for in the following terms:

"In consideration whereof, and forasmuch as your complainant is remediless in the premises under the rules of the common law and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, and to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were again here repeated, and they were thereunto specially interrogated, but not under oath, answer under oath being expressly waived, the complainant prays that the said defendants be required so to answer, and that an injunction may be issued out of this court enjoining and prohibiting the defendants Franklin McNeill, Samuel L. Rogers and Eugene C. Bedding-
209 field, constituting the Corporation Commission of North Carolina, and each of them individually, and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, from preparing and publishing the tariff of rates, charges and tolls mentioned in said act in respect to freight rates, and from classifying the railroads operating in North Carolina in accordance with, and from publishing the rates fixed by said act in respect to passenger rates, and from taking any steps, under or in pursuance of the said act of the General Assembly of North Carolina entitled 'An Act to prevent unjust discrimination in Freight Rates and to fix maximum charges therefor,' ratified March 9, 1907, or under said act of the General Assembly of North Carolina entitled 'An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina,' ratified March 2, 1907, and from taking any step in pursuance of any of the laws of the State of North Carolina, either directly or through the said defendant, Robert D. Gilmer, Attorney General, or Hayden Clement, Assistant Attorney General, or by or through any other attorney at law, or otherwise to enforce either of said Acts or the penalties therein prescribed, or any other penalties against the complainant, or against any of its officers, agents, or employees, for failure to put into effect or to observe on any of the lines of complainant in North Carolina the said freight rates or the said passenger rates required by either of said Acts, and enjoining the defendants Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, each and every of them, and their and each of their successors in office, from taking any step under the laws of North Carolina, by themselves or through any other attorney at law, or otherwise, for the purpose of enforcing either of said Acts or any of the penalties thereby prescribed, or any other penalties against the complainant or against any of its officers, agents or employees, for failure to put into effect, or to comply with either of the

said Acts of the General Assembly of North Carolina or any of the provisions thereof, and enjoining each and all of said defendants, their servants or agents, from instituting or bringing, or causing to be instituted or brought, as aforesaid, any suit, either at law or in equity, against your complainant, or against any officer, agent or employee of your complainant, compelling your complainant, or any of its said officers, agents or employees to put into effect, or observe, either of said Acts, or any provision thereof, and enjoining and prohibiting the said Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, and each of them, and their successors in office, and each and every other attorney at law,
210 that may be employed or appointed by the said Corporation Commission of North Carolina, or by the said Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, Railroad Commissioners, or either of them, or by any other officer of the State of North Carolina, from bringing or prosecuting any action or proceeding, civilly or criminally, against your complainant, or any of its officers, agents or employees, for penalties or fines or damages, or for any cause of action whatsoever, for failure to put into effect on any of the said lines of railway of the complainant in North Carolina any of said tariffs, passenger or freight, or for failure to observe said Acts or either of them, or any provision of either, and from instituting or bringing or causing to be instituted or brought, any suit at law or in equity, for penalties or otherwise, against the complainant or any officer or agent of the complainant, for charging more for freight or passenger transportation than is provided by said Acts, or so as in any way to prevent or hinder the complainant from increasing its freight and passenger charges, to the extent that such increase may be fair, reasonable and just, and enjoining and prohibiting all other individuals, persons or corporations from instituting or prosecuting any suit or suits against the complainant, or against any officer, agent or employee of the complainant, for the recovery of any damages or overcharges, or for the recovery or imposition of any penalty or penalties, under or by virtue of said Acts or either of them, or under or by virtue of any other law of North Carolina, because of or growing out of the failure of the complainant or any of its officers, agents or employees, to put into effect, or observe, any of the provisions of said acts, or either of them; and that the said tariffs, freight and passenger, prescribed by said Acts, and each and every of the provisions of said Acts, and of each of them, be declared to be unreasonable, unfair and unjust to the complainant, and unconstitutional, null and void.

"That in the meantime, and until a decision can be had upon your complainant's motion for the injunction herein prayed, a restraining order may be granted, restraining the acts sought herein to be enjoined, your complainant hereby averring that there is danger of irreparable injury from delay if action should not be taken until such motion for an injunction can be tried upon its merits.

"That a writ of injunction be issued, etc., commanding, etc., enjoining the defendants as above prayed.

"That on a final hearing said injunction as herein prayed may be

made perpetual; that the said Act, ratified March 9, 1907, and the said Act, ratified March 2, 1907, providing for said freight and passenger tariffs, respectively, may each of them be declared null and void by a decree of this court, so far as the same relate to any of your complainant's said lines of railroad in North Carolina, or to any of its business, and that your complainant may have such other
211 and further relief as in justice it may be entitled to, and as to equity is meet.

"That this complainant may have leave to make, by supplemental process, as new parties defendant, as occasion may require, any person or corporation who may appear asserting against this complainant, or against any of its officers, agents or employees, any alleged right or remedy under either of said acts, or otherwise, because of the failure of the complainant, or any of its officers, agents or employees, to put into effect, or to observe, any rate mentioned in either of said acts or any other provision of said acts, or either of them.

"May it please your Honors to grant unto your complainant the temporary restraining order aforesaid, the writ of injunction aforesaid, and the writ of subpœna addressed to said defendants Franklin McNeill, Samuel L. Rogers and Eugene C. Beddingfield, individually, and as constituting the Corporation Commission of North Carolina, and Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, commanding said defendants, under a penalty therein named, to appear in this court, on some certain day, to be thereby fixed, to answer the premises and abide by and perform such decree as may be passed herein, but said answer as above stated not to be made on oath, answer under oath being expressly waived."

All of which will more fully appear by reference to the said original bill in this cause.

12. And your complainant shows unto your Honors that the prayer of this complainant above set forth was granted by the Honorable J. C. Pritchard, a judge of this court, and that accordingly a restraining order issued out of this court on the eighth day of May, 1907, restraining, in substantial accordance with the terms of your complainant's prayer above set forth, until the determination of your complainant's motion for an interlocutory injunction, the acts sought to be enjoined.

13. Your complainant further shows that the said defendants having been duly served with process, appeared accordingly, and put in their answer to the said bill, and, evidence having been presented and argument heard on the part of your complainant and of the said defendants, the said Honorable J. C. Pritchard, having considered your complainant's bill of complaint, the answer of the said defendants thereto, and the evidence and argument presented, did, on the twenty-ninth day of June, 1907, enter a decree, granting the motion of your complainant for the injunction *pendente lite* prayed for, and awarded a writ of injunction as follows:

212 "In the Circuit Court of the United States for the Eastern District of North Carolina.

"SOUTHERN RAILWAY COMPANY, Complainant,

vs.

"FRANKLIN MCNEILL, SAMUEL L. ROGERS, EUGENE C. BEDDINGFIELD, ROBERT D. GILMER, and HAYDEN CLEMENT, Defendants.

"The President of the United States of America to Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, and Hayden Clement, and to all other individuals and corporations, their and each of their attorneys, agents, and employees, Greeting:

"The honorable Judge of the Circuit Court of the United States for the Eastern District of North Carolina, sitting in vacation, having, on the 29th day of June, 1907, after due notice and hearing, ordered that an injunction issue as herein stated, therefore:

"1. Until the further order of the court herein, the defendants, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually, and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their agents and employees, are, and each of them is, hereby enjoined and restrained from preparing or publishing the tariff of rates, charges and tolls mentioned in the fifth section of the Act in the bill in this cause mentioned, entitled, 'An Act to prevent unjust discrimination in freight rates, and to fix the maximum charges therefor,' ratified March 9th, 1907, and hereinafter referred to as the 'Act in respect to freight rates,' and from classifying the railroads operating in North Carolina in accordance with, and from publishing the rates fixed by, an act of the General Assembly of North Carolina in the bill in this cause mentioned, entitled 'An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina,' ratified March 2d, 1907, and hereinafter referred to as the 'Act in respect to passenger rates,' and from naming and designating the ticket offices in North Carolina at which mileage books good on a line of this complainant shall be kept on sale.

"2. Until the further order of the court herein, the defendants, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually, and jointly as constituting the
213 said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their attorneys, agents and employees, and the defendants, Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, their and each of their successors in office, and their and each of their attorneys, agents and employees are, and each of them is, hereby restrained and enjoined from taking any step or steps, in pursuance of said Act in respect to freight rates, or of said

Act in respect to passenger rates, or of any of the laws of the State of North Carolina, either directly, or by or through any other attorney, agent or employee or otherwise, or by any suit, prosecution or proceeding, civil or criminal, or in any other manner, for the purpose of enforcing or endeavoring to put into effect as against the complainant or any of its officers, agents, or employees, or to force the complainant, or any of its officers, agents or employees to put into effect, said Act in respect to freight rates, or the said Act in respect to passenger rates, or any part of either of said acts, or the penalties prescribed, or provided for in either of said acts, or any other penalties or punishments against the complainant, Southern Railway Company, or against any of its officers, agents or employees for failure to put into effect, or to observe, on any of the lines of the said complainant in North Carolina the freight rates, or the passenger rates, prescribed, or provided for, in said acts, or either of them, or for failure to comply with either of said acts, or with any provision of either of them.

"3. Until the further order of the court herein, all other individuals and corporations are, and each of them is, hereby restrained and enjoined from instituting, or prosecuting, any suit or prosecution or other proceeding, either civil or criminal, against said complainant, or against any officer, agent or employee of said complainant, for the recovery or imposition of any penalty or punishment, under or by virtue of said Act in respect to passenger rates, or the said Act in respect to freight rates, or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of the said complainant, or any of its officers, agents or employees, to put into effect, or to observe, on any of the lines of the complainant in North Carolina the freight rates or the passenger rates prescribed in said acts, or in either of them, or to comply with any of the provisions of either of said acts, or for the recovery of any damages or overcharges, because of, or growing out of, any such failure, or for the enforcement of any claim, alleged right or cause of action, growing out of, or connected with, any such failure.

"Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of Raleigh, in the State of North Carolina, this 29th day of June, 1907.

[SEAL.] "H. L. GRANT, *Clerk*,

"By GEO. L. TOUNOFFSKI, *D. C.*"

214 14. Your complainant shows that since the granting of the said injunction *pendente lite*, it has come to the knowledge of your complainant that J. A. Spence, Elijah Moffit, J. R. McK[illegible], E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, and Jesse Eldridge, Claude Howell, Wallace Armstrong, and Guy Smitherman, the last four being infants under the age of twenty-one years, J. M. Way and B. C. Beckwith, are attempting or threatening to arrest or enforce against your complainant, or one or more of its officers, agents, or employees, an alleged right, remedy, penalty, or punishment, under said acts or one

of them, or some other act, of the State of North Carolina, because of the failure of your complainant, or of one or more of its officers, agents, or employees, to put into effect or observe a rate or rates prescribed in said act in respect to passenger rates, or in said act in respect to freight rates, or some other provision of said acts or either of them, in that the said J. A. Spence has instituted suit against your complainant in the Superior Court of Randolph County, North Carolina, as attorney representing J. R. McKenzie, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, and Guy Smitherman, the last four being infants under the age of twenty-one years, and J. M. Way, and all the said parties last mentioned, have through the said J. A. Spence, as their attorney, instituted such suits in said Superior Court, and the said Elijah Moffitt has instituted against your complainant in said Superior Court, as attorney for E. B. Hatch, and the said E. B. Hatch has, through the said Elijah Moffitt, as his attorney, instituted such suits in said Superior Court against your complainant, and the said J. M. Way has as next friend for the said Jesse Eldridge, Claude Howell, Wallace Armstrong and Guy Smitherman, infants as aforesaid, through said J. A. Spence, as his attorney, instituted against complainant in said Court one of said suits; all of said suits being instituted, and having for their purpose, to enforce against this complainant, and in favor of said individuals respectively, the penalties provided in favor of individuals by Section 4 of an Act of the General Assembly of North Carolina, ratified on the 2nd day of March, 1907, and in said Bill referred to as the act in respect to Passenger Rates, the enforcing of which said penalties has already been enjoined by this Honorable Court in this cause; and the said B. C. Beckwith, as attorney for various parties, is about to institute, and unless prevented by the order of this Court, will institute against this complainant a number of suits for
215 the same purpose of enforcing against your complainant penalties provided by said Section 4 of the said Act in respect to passenger rates. The said B. C. Beckwith has, by a card published in the public press, expressed his willingness to bring these suits, notwithstanding the restraining order and injunction entered herein, of which said injunction the said B. C. Beckwith had notice at the time he made such publication, and since said publication the said B. C. Beckwith has accepted employment by the various parties for the purpose of enforcing against this complainant, contrary to the order heretofore entered herein, the penalties aforesaid, and has, as your complainant is informed and verily believes, thus obtained and accepted employment in a large number of such suits.

15. And your complainant shows that leave was granted to your complainant in the aforesaid interlocutory decree to make, by supplemental process as new parties defendant any person or corporation, attorney or solicitor, doing or threatening to do, the acts herein sought to be enjoined.

16. And your complainant shows that the effect of the provisions of the said act in respect to Freight Rates and of the said act in

respect to Passenger Rates, whether taken separately or together, imposing upon this complainant, in addition to the punishment of the officer, servant, agent or employee for a misdemeanor, for each shipment of freight at a greater rate than is allowed by the said act in respect thereto, a fine of one hundred dollars, and for each sale of a passenger ticket at a rate greater than is allowed by the said act in respect to passengers, a fine of five hundred dollars, is to impose excessive fines upon your complainant and to inflict cruel and unusual punishments upon it, in violation of Section 14 of Article 1 of the Constitution of North Carolina, the benefit and protection of which your complainant hereby respectfully sets up and claims.

17. And your complainant further shows that it will be irremediably injured unless an injunction be granted as hereinafter prayed for, and relief be given to it in this suit.

In consideration whereof, and forasmuch as your complainant is remediless in the premises under the rules of the common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, your complainant prays that the said J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, J. M. Way, and B. C. Beckwith be made parties defendant to this suit, and that they may be required to answer the several matters and things hereinbefore set forth as fully and particularly as if the same were again here repeated and they thereunto specially interrogated, but not under oath, answer under oath being expressly waived, and complainant prays that the said defendants and each of them be required so to answer, and that an injunction may be issued out of this court enjoining and prohibiting the said J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, J. M. Way, and B. C. Beckwith and their attorneys, solicitors and agents and all other persons, individuals and corporations from instituting, or prosecuting, or permitting or authorizing to be instituted or prosecuted, and from further prosecuting any suit or prosecution or other proceeding, either civil or criminal, against your complainant, or against any officer, agent, or employee of your complainant, for the recovery or imposition of any penalty or punishment, under or by virtue of said act in respect to freight rates, or the said act in respect to passenger rates, or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of the said complainant, or any of its officers, agents, or employes, to put into effect, or to observe, on any of the lines of the complainant in North Carolina, the freight rates or the passenger rates prescribed in said acts, or in either of them, or to comply with any of the provisions of either of said acts, or for the recovery of any damages or over-

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charges, because of, or growing out of, any such failure, or for the enforcement of any claim, alleged right, or cause of action, growing out of, or connected with, any such failure.

And in the meantime, and until a decision can be had upon the complainant's motion for the injunction herein prayed for, that a restraining order may be granted, restraining the acts sought herein to be enjoined.

That, on the final hearing, said injunction, as herein prayed, may be made perpetual, and that your complainant may have such other and further relief as in justice it may be entitled to and as to equity is meet.

May it please your Honors to grant unto your complainant the temporary restraining order aforesaid, the writ of injunction
217 aforesaid, and the writ of subpœna addressed to said defendants, commanding said defendants, under a penalty therein named, to appear in this court, on some certain day, to be thereby fixed, to answer the premises and abide by and perform such decree as may be passed herein, but said answer, as above stated, not to be made on oath, answer under oath being expressly waived.

This is the first application by your complainant for leave to bring the said defendants into this cause as parties defendant and for a restraining order and injunction against said defendants by name.

SOUTHERN RAILWAY COMPANY,
Complainant,
By S. H. HARDWICK, *Passr. Traffic Manager.*

W. B. RODMAN,
A. C. AVERY,
F. H. BUSBEE,
MOORE & ROLLINS,
JOHN K. GRAVES,
Solicitors for Complainant.

____ ____,
Of Counsel.

UNITED STATES OF AMERICA, *District of Columbia, To wit:*

I, Harry F. Pierce, a Notary Public, duly commissioned, qualified, and acting as such in and for the city of Washington, in the District of Columbia, do hereby certify that S. H. Hardwick, whose name is subscribed to the foregoing bill, personally appeared before me this 11th day of July, 1907, and made oath that he is Passenger Traffic Manager of Southern Railway Company, the complainant in the foregoing supplemental bill of complaint; that he has read the foregoing bill and knows the contents thereof; that the facts therein stated, as of complainant's own knowledge, are true; and that the facts therein stated upon complainant's information and belief, he believes to be true.

My commission as notary public expires on the 17th day of July, 1910.

218 In witness whereof, I have hereunto signed my name and affixed my notarial seal at the city of Washington, in the District of Columbia, this 11th day of July, in the year 1907.

HARRY F. PIERCE,
Notary Public.

and obtained a restraining order against the said defendants, which said restraining order is in words and figures as follows:

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET AL., Defendants.

Supplemental Proceeding.

Upon reading the verified supplemental bill in this cause, and upon its being made to appear to the court that there is danger of irreparable injury to the complainant from delay, unless the acts sought to be enjoined herein are restrained until the determination of the motion for an injunction in this cause, it is now ordered:

1. That J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, J. M. Way, and B. C. Beckwith are hereby made parties defendant in this cause.

2. That the said defendants J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, J. M. Way, and B. C. Beckwith and each of them, and their attorneys, solicitors and agents, and each of them, and all other persons, individuals, and corporations are hereby restrained and enjoined from instituting, or prosecuting, and from further prosecuting, any suit or prosecution or other proceeding, either civil or criminal, against the complainant or against any officer, agent, or employee of the complainant,
219 for the recovery or imposition of any penalty or punishment, under or by virtue of an act of North Carolina, ratified March 9, 1907, entitled "An Act to prevent unjust discrimination in freight charges and to fix maximum charges therefor," or an act of North Carolina, ratified March 2, 1907, entitled "An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of the said complainant, or any of its officers, agents, or employees, to put into effect, or to observe, on any of the lines of the complainant in North Carolina the freight rates or the passenger rates prescribed in said

acts, or in either of them, or to comply with any of the provisions of either of said acts, or for the recovery of any damages or overcharges, because of or growing out of, any such failure, or for the enforcement of any claim, alleged right, or cause of action, growing out of, or connected with, any such failure.

3. That the defendants, and each of them show cause before the undersigned Judge of this court in the United States Court Room at Asheville, North Carolina, at ten o'clock, a. m., on the 12 day of August, 1907, why an injunction *pendente lite*, as prayed in the supplemental bill, should not be issued, and that a copy of this order be served as soon as practicable upon each of the said defendants.

4. That this restraining order shall be in force and effect from the date hereof, and until the determination of the complainant's motion for an interlocutory injunction herein.

This 13 day of July, 1907.

JETER C. PRITCHARD,
United States Circuit Judge.

6. Your complainant showeth unto your Honor that the larger part of your complainant's lines of railroad and other property are situated in the Western District of North Carolina, the remainder thereof in said state being situated in the Eastern District thereof, and that this complainant is entitled to invoke the ancillary
220 powers of this Honorable Court in the Western District of North Carolina for the purpose of more effectively dealing with the subject matter of this suit and protecting this complainant in its constitutional right and in having judicially determined in the Courts the controversy set out and defined in the original bill in this cause, which said original suit is still pending and undetermined in the Circuit Court of the United States for the Eastern District of North Carolina.

In consideration whereof and forasmuch as your complainant is remediless in the premises under the rules of the common law and can have adequate relief only in a Court of equity where matters of this nature are properly cognizable and relievable, and to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were again here repeated and they were thereunto specially interrogated, but not under oath, answer under oath being expressly waived, the complainant prays that the said defendants be required so to answer, and that an injunction may be issued out of this court enjoining and prohibiting the defendants above named, namely, Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually and jointly as constituting the State Corporation Commission of North Carolina, and each and all of their successors in office, from preparing and publishing the tariff of rates, charges and tolls mentioned in said act in respect to freight rates, and from classifying the railroads operating in North Carolina in accordance with, and from publishing the rates fixed by, such act in respect to passenger rates, and

from taking any steps under or in pursuance of the said act of the general assembly of North Carolina entitled: "An act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," and enjoining and prohibiting the defendants: Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, Hayden Clement, J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, the last four being infants under the age of twenty-one years, and J. M. Way and B. C. Beckwith, and each of them, their and each of their attorneys, agents and employees, from instituting or prosecuting, and from further prosecuting, any suit or prosecution which has been instituted, or from proceeding, either civilly or criminally, against the complainant, or against any officer, agent or employee of
221 the complainant, for the recovery or imposition of any penalty or punishment under or by virtue of an act of the general assembly of North Carolina, ratified March 9th, 1907, entitled "An Act to prevent unjust discrimination in freight charges and to fix maximum charges therefor," or an act of the general assembly of North Carolina ratified March 2, 1907, entitled "An act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina," or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of the said complainant, or any of its officers, agents or employés, to put into effect, or to observe on any of the lines of the complainant in North Carolina, the freight rates or the passenger rates prescribed in said acts, or in either of them, or to comply with any of the provisions of said acts or for the recovery of any damages or overcharges because of, or growing out of, any such failure, or for the enforcement of any claim, alleged right, or cause of action, growing out of or connected with any such failure; that in the meantime, and until a decision can be had upon your complainant's motion for an injunction herein prayed, a restraining order may be granted restraining the acts sought herein to be enjoined, your complainant hereby averring that there is danger of irreparable injury from delay if action should not be taken until such motion for an injunction can be tried on its merits.

That a writ of injunction be issued, etc., commanding, etc., enjoining the defendants as above prayed.

That on a final hearing said injunction as herein prayed may be made perpetual; that the said act ratified March 9, 1907, and said act ratified March 2, 1907, providing for said freight and passenger tariffs, respectively, may each of them be declared null and void by a decree of this court, so far as the same relate to any of your complainant's said lines of railroad in North Carolina, or to any of its business, and that the provisions of said act in respect to penalties be declared null and void, as contrary to the fourteenth amendment to the Constitution of the United States, and that your complainant

may have such other and further relief as in justice it may be entitled to and as to equity is meet.

That this complainant may have leave to make, by supplemental process, as new parties defendant, as occasion may require, any person or corporation who may appear asserting against this complainant, or against any of its officers, agents or employés, any alleged right or remedy under either of said acts, or otherwise, because of the failure of the complainant, or any of its officers, agents or em-
222 ployés, to put into effect, or to observe, any rate mentioned in either of said acts or any other provision of said acts, or either of them.

May it please your Honors to grant unto your complainant the temporary restraining order aforesaid, the writ of injunction aforesaid, and the writ of subpœna addressed to said defendants Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, Hayden Clement, J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, the last four being infants under the age of twenty-one years, and J. M. Way and B. C. Beckwith, commanding said defendants, under a penalty therein named, to appear in this court, on some certain day, to be thereby fixed, to answer the premises and abide by and perform such decree as may be passed herein, but said answer as above stated not to be made on oath, answer under oath being expressly waived.

This is the first application by your complainant for a restraining order or injunction in this case as to J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, the last four being infants under the age of twenty-one years and J. M. Way and B. C. Beckwith.

SOUTHERN RAILWAY COMPANY,
Complainant,

By J. M. CULP,
Vice President.

W. B. RODMAN,
F. H. BUSBEE,
JOHN K. GRAVES,
MOORE & ROLLINS,
Solicitors for Compldinant.

FRANCIS LINDE STETSON,
ALEX. P. HUMPHREY,
WALTER D. HINES,
ALFRED P. THOM,
Of Counsel.

223 UNITED STATES OF AMERICA,
District of Columbia, To wit:

I, Harry F. Pierce, a Notary Public, duly commissioned, qualified, and acting as such in and for the city of Washington, in the District of Columbia, do hereby certify that J. M. Culp, whose name is subscribed to the foregoing bill, personally appeared before me this 13 day of July, 1907, and made oath that he is vice President of Southern Railway Company, the complainant in the foregoing ancillary bill of complaint; that he has read the foregoing bill and knows the contents thereof, and that the same is true to his own knowledge except as to those matters therein stated upon information and belief; and as to those matters he believes it to be true.

My commission as notary public expires on the 17 day of July 1910.

In witness whereof, I have hereunto signed my name and affixed my notarial seal at the city of Washington, in the District of Columbia, this 13 day of July, in the year 1907.

HARRY F. PIERCE,
Notary Public. [SEAL.]

224 RALEIGH, N. C., *July* 20, 1907.

Received the within ancillary bill July 20, 1907 and executed on the same day at Raleigh N. C. by delivering a copy each personally to Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, and B. C. Beckwith.

Service was not made on Robt. D. Gilmer or his assistant Hayden Clements, for the reason that neither could be found in this district, the office of the attorney general being closed.

It is reported that Robt. D. Gilmer is in Waynesville N. C. for the summer.

CLAUDIUS C. DOCKERY,
United States Marshal.

Costs $8.00.

Received July 20, 1907, Executed July 20, 1907 *1907*, by leaving copy of within to each J. A. Spence, Elijah Moffitt, E. B. Hatch, F. A. Henley, W. M. Hooker, and J. M. Way and by leaving a copy to each on July 22, J. R. McKenzie, W. C. Hensley, Charles A. Armstrong, L. F. Nance, Spencer Howell Robert Howell, Guy Smitherman, Coom Howell, Harry Smitherman, Jessee Eldridge, Claud Nowell, Wallace Armstrong.

J. M. MILLIKAN,
U. S. Marshal,
By J. M. ALLEN,
Deputy Marshal.

Fees $36.00.

Received 29" day of July by delivering a copy of within to Hayden Clement on July 29, 1907.

J. M. MILLIKAN,
U. S. Marshal,
By R. S. RAMSEY,
D. Marshal.

Fees $2.00.

West Dist. North Carolina. Office U. S. Marshal. Received Jul-20, 1907. No. 1700, Greensboro, N. C.

225 CHAPTER 35.

AN ACT TO ESTABLISH WITHIN THE CITY OF ASHEVILLE A SPECIAL COURT TO BE CALLED THE POLICE COURT AND PRESCRIBE THE JURISDICTION THEREOF.

The General Assembly of North Carolina do enact:

Police Court established.

SECTION 1. A Special Court for the trial of misdemeanors and to be designated as the "Police Court" of the City of Asheville is hereby established.

Court of Record.

Qualifications for Police Justice.

Term of office.

Elected as other officers.

Salary.

SEC. 2. Said Police Court shall be a Court of record and shall be presided over by a police justice who shall be licensed attorney of good moral character in good standing, and an elector of the City of Asheville, who shall hold office for a term of two years and he shall not be eligible to re-election. Said Police Justice shall be elected by the people at the time the other officers of the City of Asheville are elected, and he shall receive a salary of seventy-five dollars per month the same to be paid by the City of Asheville.

Sessions of Court.

SEC. 3. Said Police Court shall hold daily sessions at the city hall in the City of Asheville, and the daily sessions shall begin at nine A. M. and continue until the business of the Court is dispatched.

Jurisdiction and powers.

SEC. 4. Said Police Court shall have all the jurisdiction and powers in all criminal offenses occurring within the corporate limits of the City of Asheville which are now or may hereafter be given to justices of the peace, and shall also have exclusive original jurisdiction to hear and determine all offenses and misdemeanors consisting of a violation of an ordinance of said City.

Further jurisdiction.

SEC. 5. Said Police Court shall in addition to the jurisdiction conferred by section four of this act have exclusive original jurisdiction of all other criminal offenses committed within the corporate limits of said City below the grade of felony as now defined by law, and all such offenses committed within said city are hereby declared to be petty misdemeanors.

Warrants.

Appeals.

SEC. 6. Warrants may be issued by said Police Justice for any person or persons charged with the commission of any offense of which said court has jurisdiction and any person convicted in said Court shall have the right of appeal to the superior court, and upon such appeal the trial in the superior court shall be *de novo*.

Magistrates to bind over to police court.

SEC. 7. In all cases heard by the justices of the Peace and other committing magistrates against any person or persons for any offense included in section five of this act in which probable cause of guilty is found such person or persons shall be bound in a suitable recognizance with sufficient surety to appear at the next succeeding session of said Police Court for trial, and in default of such recognizance such person or persons shall be committed to the common jail of Buncombe County awaiting trial.

Trials upon warrants.

SEC. 8. All trials in said police court shall be upon warrant issued by said police court.

Costs upon warrants.

226 SEC. 9. All costs incurred in issuing of such warrants and for the serving of process arising upon warrants upon which any defendant shall be bound to said police court shall belong to and be the property of such justice of the peace or of a Sheriff of Buncombe County or the constable serving the same, as the case may be, and the same shall be paid to them by the proper authorities.

Punishments.

SEC. 10. Any person convicted in said police court or any of the offenses mentioned in section five of this act shall be fined, or imprisoned, or both fined and imprisoned, according to law. Every person convicted of an offense shall pay the costs of the prosecution.

Convicts sentenced to county roads.

SEC. 11. Whenever any person is convicted in said police court of any of the offenses mentioned in section five of this act, and the punishment imposed is imprisonment and costs, the police justice shall sentence the defendant to the county jail of Buncombe County to be worked upon the county roads of Buncombe County until such sentence has been complied with. Any person convicted of any other offense, over which said police court has jurisdiction, and not included in section five, where the punishment is imprisonment and labor, shall be required to work upon the streets of the City of Asheville until the judgment of the court is complied with.

Convicts sentenced to work on streets.

Police justice to preside and try causes.

SEC. 12. Said Police Justice shall preside over said police court, and try and determine all actions coming before him, the jurisdiction of which is conferred by this act, except in cases where he is legally incompetent to try the same, in which case, the said case shall be, upon application of the defendant removed for trial to such other court in the county of Buncombe as would, but for this act, have jurisdiction of the same.

Removal.

Legal incompetency defined.

Such legal incompetency shall be considered to mean only such incompetency as would disqualify a judge of the superior court to try under the same circumstances, a case pending in such last mentioned court.

Proceedings.

SEC. 13. The proceedings of the said police court shall be the same as are now or may hereafter be prescribed by law, for courts of justices of the peace, and in all cases there shall be a right of appeal on the part of the defendant adjudged guilty to the next term of the superior court. In all such cases of appeal the defendant shall be required to give bond with sufficient surety to insure the defendant's appearance at the next succeeding term of the superior court, and in default thereof, said police justice shall commit such defendant to the common jail of Buncombe County until said defendant shall give such bond or be otherwise discharged according to law.

Right of appeal.

Bonds for appearance.

Civil jurisdiction.

SEC. 14. Said court shall also have jurisdiction to try all actions for the recovery of any penalty imposed by law or this act, or by any ordinance of said city for any act done within said city; and such penalty shall be sued for and recovered in the name of said City of Asheville, and if incurred by a minor shall be recovered from and in an action against, his parents or guardian, or if he be an apprentice, against his master. From any judgment for such penalty imposed or allowed to be imposed by this act, or for the violation of any ordinance of said city, either party may appeal to the next term of the Superior Court of Buncombe County in like manner and under the same rules and regulations as are prescribed for appeals from judgments of justices of the peace and in case the police justice shall be disabled, by reason of relationship, or otherwise incompetent to hear and determine such action, the same may be instituted and prosecuted in any court within said County which would, but for this act have jurisdiction thereof, under the same rules and regulations as if instituted and tried in said police justice's court, where applicable. In all cases where judgments may be entered up against any persons for fines or penalties, according to the laws and ordinances of said City, as for criminal offenses, and the person or persons against whom the same is so adjudged, refuse, fail or are unable to pay such judgment, it shall be lawful for the police justice of said city to order and require such person or

Appeal.

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Judgment for penalties worked out.

persons to work on the streets or other public works of said city, under the supervision of the Chief of Police or street overseer thereof, and under such rules, regulations and forms of discipline as may be from time to time prescribed by the Board of Aldermen thereof, until, at a fair rate of wages to be prescribed by said Board of Aldermen, such person or persons shall have worked out the full amount of such judgment and costs of prosecution.

Penalties to use of city.

SEC. 15. All penalties collected for any misdemeanor consisting of a violation of the Charter or of any ordinance of said City, whether in the Court in which the prosecution originated or in the Court to which it was carried by appeal, shall belong to said City, and immediately upon collection shall be paid to the Treasurer of said City and all judgments rendered in any court for such fines or penalties shall belong to and be controlled by said City and collected in the same manner in which by law such judgments would, but for this section, be collected and enforced. All penalties hereinbefore provided to be recovered in the name of the said city of Asheville, shall belong and, upon collection, be paid to said city, and all judgments for the same shall belong to and be controlled by said city and be collected in the same manner, as other judgments for money are collected, and may be docketed in the superior court of this State in the same manner as is by law provided for the docketing of judgments, and when so docketed shall be and constitute liens in the same manner and to the same extent as other judgments so docketed.

Docketing judgment for penalties.

Precepts of police justices.

SEC. 16. The Police Justice of said City may issue his precepts to the sheriff of said county of Buncombe, or to any constable or policeman or to any officer to whom a justice of the peace may direct his precepts.

Minutes to be kept.

SEC. 17. The said Police justice shall cause to be kept a faithful minute of the precepts issued by him, and of all his judicial proceedings. Precepts issued by said police justice shall be executed by the Sheriff of Buncombe County or any of the police officers of the City of Asheville or other officers to whom they are directed, or any of them anywhere in the County of Buncombe, and the costs allowed in said Court shall be the same as those allowed by law in similar proceedings before justices of the peace: provided, however, that all costs recovered and collected in or on

Precepts to be executed.

Costs.

Costs to use of city.

account of any and all prosecutions or proceedings in said police court, whether collected in said police court or in the superior court, on appeal shall belong to said city and shall be turned over by the officer collecting the same, within ten days after said collection, to the Treasurer thereof to be used in and for the support and maintenance of the police department of said City; except, however, that the costs for all processes and warrants which may be due to any justice of
228 the peace in cases where defendants are bound to the police court, and all costs due to the sheriff of Buncombe County or any constable of Asheville Township, for serving any process issued by said Police justice or by any justice of the peace for Buncombe County, in cases in which said police court has jurisdiction (defendants are bound by said justices of the peace to the said police court), shall be paid to the officer or officers earning the same.

Vacancy.

SEC. 18. In case of a vacancy occurring in the office of police justice of said City for any cause, such vacancy shall be filled by the election of a police justice for the remainder of the term by the Board of Aldermen of said City. Said police justice shall be liable to removal from office by the Board of Aldermen, but only after notice of the charges against him and a full opportunity to be heard, and the penalty for misconduct, amounting to nonfeasance, misfeasance, or malfeasance in office. In case of the temporary absence of said police justice from the city, or other temporary inability or disability on his part to perform the duties of his office, the same shall devolve upon and be performed by the substitute police justice hereinafter provided for.

Police justice removable for cause.

Substitute Police Justice.

Election of substitutes.

SEC. 19. Immediately upon the qualification of said police justice, or as soon thereafter as may be practicable, and bi-annually thereafter, the Board of Aldermen of the city of Asheville shall elect a citizen of said City possessing all the qualifications required for police justices to fill the office of substitute police justice, which is hereby created. The term of office of said substitute police justice shall be concurrent with that of said police justice, and any vacancy occurring in said office of police justice shall be filled by said Board of Aldermen. Said substitute police justice shall receive in full compensation for his services the sum of five dollars per day for such time as he may be actually engaged in the per-

Pay of substitute.

formance of the duties of said police justice, the same to be deducted from the salary of said police justice and not to exceed in any calendar month the full salary of said police justice for that month.

Clerk.

SEC. 20. The Board of Aldermen of the City of Asheville are authorized to appoint and employ a clerk for said poilce court. and to fix his salary for the same. Said Board of Aldermen are also authorized, in their discretion, to appoint a prosecutor for said police court and to fix his salary for the same, or it may in its discretion direct the corporation counsel of the City of Asheville to appear as prosecutor in said police court and to fix such additional compensation for said corporation counsel as to it may seem best.

Prosecutor.

Repeal.

SEC. 21. Chapter one hundred and nine of the Private Laws of the Session of the General Assembly for the year One thousand eight hundred and ninety-seven, being an act to provide for the appointment and the election of a police justice for the City of Asheville, be and the same is hereby repealed.

Repeal.

SEC. 22. That Sections twenty, twenty-one, twenty-two and twenty-three of Chapter One hundred of the Private Laws of One thousand nine hundred and one be and the same are hereby repealed.

Police justice's name.

229 SEC. 23. That Thomas A. Jones Esq. of Asheville, North Carolina, the present police justice of the City of Asheville, be and he is hereby appointed police justice of said Court, to hold his office until the second Tuesday in May, one thousand nine hundred and five, and said Thomas A. Jones, is hereby declared to be eligible to re-election to said office at the election for the city officers for said city in May, one thousand nine hundred and five.

Conflicting laws repealed.

SEC. 24. That all laws and clauses of laws and parts of laws, whether of a general or private nature, inconsistent with any of the provisions of this act, be and the same are hereby repealed.

In effect from 1st April.

SEC. 25. This act shall be in force and effect from and after the first day of April, one thousand nine hundred and five.

In the General Assembly read three times and ratified this 4th day of March, 1905.

230 *Evidence.*

U. S. Circuit Court. Filed Jul- 20, 1907. W. S. Hyams, Clerk.

Hearing in Habeas Corpus Proceeding, Before Judge Pritchard, Circuit Judge, in Matter of Arrest of J. H. Wood and O. C. Wilson for Violation of the Railroad Rate Law.

G. S. REYNOLDS, being duly sworn, testified as follows:—

Examined by Mr. RODMAN:

Q. You are the Police Justice of the City of Asheville, are you not?
A. Yes sir.
Q. And a practicing lawyer?
A. Yes sir.
Q. Please state whether or not on or about the 15th of July at the instance of J. B. Wells you issued a warrant against Mr. J. H. Wood and Mr. Graham?

Mr. MERRIMON: We object. It is immaterial, so far as we can see whether he issued the warrant at the instance of Mr. Wells or not. It's not pertinent to the investigation before your Honor now. This write says by reason of a warrant issued at the instance of a man named Harmon. Whether it was issued at the instance of Mr. Wells or not doesn't make any difference.

The COURT (to Mr. Rodman): On what theory do you offer this evidence?

Mr. RODMAN: The theory is that your honor has made an order directing the Southern Railway Company to pursue a certain policy pending an investigation by this Court. We propose, if we can to show that the Company has through its agents, pursued that policy. We propose further, if we can, to show that there is a settled policy on the part of certain parties to break up the orderly proceeding of this Court and by the continual issuing of warrants rendering the action of this Court nugatory.

The COURT: I will admit the evidence, and I can perhaps determine later its relevancy.

Exception by respondent. Exception allowed.

Stenographer reads question.

A. Upon Mr. Wells making the affidavit which is required,
231 I issued the warrant.
Q. Have you that warrant with you?
A. It's on the table, I can produce it.
Q. Where were you when it was issued?
A. My recollection is that I was in Wells' Cigar Store.
Q. Who was present?
A. I do not remember whether any one was present or not.
Q. Were you not in the office of the Asheville Citizen?
A. I was in the office that afternoon.
Q. Were you in there at the time the affidavit was made?

A. My recollection is, as I stated before, that the affidavit was made in Mr. Wells' Cigar Store.

Q. Was Mr. Wells in the office of the Asheville Citizen with you that afternoon?

A. I really don't remember. I don't think he was.

Q. Who else was present at the time the warrant was issued?

A. Present where? Wells' Store?

Q. Yes sir wherever it was?

A. I don't remember anyone being there at all.

Q. Did Mr. Wells show you the coupon he received at that time?

A. He at least told me he had one. I am not sure whether he showed them to me or not?

Q. At the time he made the affidavit, he told you he had a coupon that the railroad agent had given him in the usual form?

A. He told me, my recollection is, that he had four coupons given him by Mr. Graham.

Q. For the excess between the two and a quarter cents and the amount charged?

A. He didn't state for what, but he said he had it.

Q. He did not turn that over to you.

A. No, sir.

Q. That suit was dismissed on Wednesday morning?

A. The record will show, I think it was Wednesday morning.

Q. Did you consult with Mr. Wells before dismissing it?

A. I did not sir.

Q. Did you hear any evidence before dismissing it?

A. I did not.

Q. You dismissed it of your own volition?

A. I did sir.

232 Q. You did not undertake to have a hearing on that?

A. I did not.

The COURT: Was that after the Writ *of Habeas Corpus* had been issued?

A. The *Habeas Corpus* Writ I think was issued Tuesday evening.

The COURT: Did you have knowledge of that fact when you dismissed the proceeding?

A. I don't know that I had actual knowledge.

The COURT: Did you have constructive or any kind of knowledge?

A. Yes sir.

Mr. RODMAN: You will recall that on Tuesday evening I told you Judge Pritchard had issued an order for the writ and it would be served?

A. I understood you to say that he was preparing it. I don't know that you said he had issued it.

Q. Did you see the Chief of Police that evening?

A. Yes sir.

Q. Did he tell you that it had been served on him?

A. Yes sir.

Q. Then you did know Tuesday evening that it had been issued on, served on him?

A. Yes sir I suppose so.

Mr. MERRIMON: We object. Mr. Reynolds is Judge of a Court of competent jurisdiction. It seems to me not proper to put a Judge on the witness stand and ask him his reasons for what he did in a matter pending before him.

The COURT: I take it that it will be contended by the State at a later stage of this proceeding that this Court ought not to entertain jurisdiction of the matter inasmuch as the defendant would have the right to carry his appeal from the justice of the peace Court to the State Court and then to the Supreme Court and in view of the fact that these writs are only issued in exceptional cases, I think it is my duty to get all the facts in this transaction.

Mr. RODMAN: Mr. Reynolds, what time Wednesday evening was it the writ in the Harmon case was issued?

A. My recollection is it was about five o'clock.

Q. Where were you when that affidavit was signed?

A. I was in the store of Mr. J. B. Wells.

Q. Who was present besides yourself and Mr. Marmon?

A. Mr. Wells was in his store.

Q. Had you seen Mr. Harmon at any time during the day
233 prior to the filing of that affidavit?

A. That's the first time I ever remember seeing Mr. Harmon, specially to recognize him.

Q. Had you been in conference with Mr. Wells during that Wednesday prior to the issuing of that affidavit?

A. I wasn't in conference with him, I had spoken to him once or twice.

Q. Had you talked to him about dismissing his case?

A. No sir, I had not.

Q. Did you inform him that it was dismissed?

A. Yes sir, I think I did.

Q. When and where?

A. I couldn't say sir. I don't remember.

Q. Was it in Mr. Wells' store?

A. I cannot say sir, because I saw Mr. Wells outside of the store.

Q. At the time you told him the case in which he made the affidavit had been dismissed, when you told him it had been dismissed, did you give him any reason why it was dismissed?

A. I did not sir.

Q. How did you happen to be in Mr. Wells' Store at the time Mr. Harmon made this affidavit?

A. I don't remember, I suppose I went in to buy cigarett-s or a cigar. That's where I buy all my goods.

Q. Did Mr. Wells say anything to you about Mr. Harmon desiring to make an affidavit?

A. I don't remember whether Mr. Wells mentioned it first but he was there, and it was spoken of.

Q. As a matter of fact did not Mr. Wells mention it first before Mr. Harmon said anything about it?

A. I was introduced to Mr. Harmon, I don't remember who mentioned it.

Q. Did not Mr. Wells send for you to come to his store?

A. He did not.

Q. Did not Mr. Wells or someone, notify you that Mr. Harmon, or someone would be there to make an affidavit?

A. They did not sir.

Q. Did you write out the affidavit at that place?

A. I did sir.

Q. Do you carry them around in your pocket?

A. I signed warrants—I have no particular place.

Q. Do you carry them around usually in your pockets?

A. I usually have some in my pocket.

234 Q. Did you have one in your pocket that day?

A. I did sir.

Q. Mr. Reynolds, when did you know, at what time during the day Wednesday, that Judge Pritchard, had left, or intended to leave the city of Ashville?

A. I heard it about three o'clock, I think sir, between two and three.

Q. Did you not state that evening that Mr. Wood and Mr. Graham and some other agent or some agent of the Southern Railway would be arrested again either that night or the next morning?

Mr. MERRIMON: I desire to protest again. This seems to me to be going entirely to- far. Mr. Reynolds is not required, as I can see to answer these questions. He is not required to give the reason for any acts of his as a public official. His position is entitled to as much respect as any court in the country. I don't think an inquiry of this kind is proper I object to it and I protest against it. I don't think he is required to give a reason, or answer questions of this character.

Judge MOORE: If it please your honor, as I understand it, the gentleman who has just taken his seat doesn't represent this witness he is our witness and he is making no protests against answering it, but I understand the gentleman represents the State of North Carolina. The witness is making no protest, *je* is our witness; we subpœnaed him and brought him here and we think as your Honor states, that this whole matter ought to be heard and now investigated and see how this transaction originated.

Mr. CARTER: I am here as a representative of Mr. Reynolds at his request and *has* his friend and attorney, and I concur in the protest by Mr. Merrimon that this examination of Mr. Reynolds is not warranted. We believe it a great injustice to Mr. Reynolds. We believe he cannot be required to go into reasons that actuated him in the discharge of his duties as a court under the laws of North Carolina, and therefore he can't be required to answer ques-

235 tions the evident purpose of which impeach him and very probably to lay the foundations for some proceedings against him for contempt of this Court, as these last questions would indicate.

The COURT: Does he stand on that right? Does he invoke that rule?

Mr. CARTER: As his attorney, I want to state to the Court that —

do advise him to invoke his rights under the Constitution of North Carolina.

The COURT: If you invoke that rule he can't be required to answer anything that would intimidate him.

Mr. RODMAN: If your honor please, I have not asked Mr. Reynolds a single question as to his reasons why *his* dismissed any warrants. I especially refrained from that. I simply asked him as to his acts and what he said while he was not on the bench. I recognize well the principles that if a witness states that an answer to a question would tend to incriminate him he has a right to decline to answer, and whenever Mr. Reynolds, as a practicing lawyer, states that his answer tends to incriminate him in any way, then I will withdraw the question.

Mr. MERRIMON: It is not a question of incriminating him. He is a judge and you have no more right to put him on the stand and subject him to such examination than you have to bring Judge Long here.

The COURT: Not as to anything he did in his judicial capacity.

Mr. CARTER: That — all we are objecting to.

The COURT: I sustain you on that and certainly won't require him to state anything that might incriminate him in contempt proceedings.

Mr. CARTER: I am not seeking to protect him from criminal prosecution, but evidently the purpose was to show that he has acted in contempt of this court, and he has a right to protect himself from that the same as any other person.

The COURT: I rule in your favor on that.

Mr. RODMAN: Mr. Reynolds, the next morning after this warrant was issued you had a trial?

A. Which warrant?

236 Q. The Harmon warrant?

A. Yes*s* sir.

Q. Have you that warrant present?

A. Yes sir, it is here in the Court.

Q. Mr. Harmon went on the witness stand, I believe?

A. He did sir.

Q. Did he produce a coupon?

A. He did sir.

Q. Is this it (showing witness paper)?

A. That's it.

Q. Is this the answer that was filed?

A. That's it sir.

Q. So this is the warrant and the coupon that was offered in evidence?

A. That's it, sir.

Q. You held did you not, that the coupon was all that was necessary to show the offence?

Mr. CARTER and Mr. MERRIMON object.

The COURT: I don't think you can attack the judgment.

Mr. RODMAN: I am not asking his reason. I am asking his conclusion of law. I am asking this as to what he ruled was the law, not why he ruled it, but what he ruled was the law. I am not asking his motive or his reasons, but simply what he ruled to be the law of the land in his Court.

Mr. CARTER: I am speaking in behalf of the witness and representing him in his capacity as a court. I submit that his rulings upon the law are not legitimate subjects of inquiry in *habeas corpus* proceedings. They can't inquire whether he had sufficient evidence before him or whether his rulings were correct or incorrect.

The COURT: I don't think it is Mr. Rodman.

Mr. RODMAN: Then Mr. Reynolds, you rendered your judgment?

A. Yes sir.

Q. You found those men guilty of selling transportation——

A. From Asheville to Canton——

Mr. MERRIMON: We object to anything about the judgment. The record speaks for itself. They can't attack it collaterally.

Mr. RODMAN: I am not attacking it collaterally.

Mr. MERRIMON: You can't even inquire into it.

Mr. RODMAN: Then you rendered your judgment?

A. I did sir.

237 Now, if your Honor please, we offer the affidavit made by T. J. Harmon and the coupon that was introduced as evidence in that case.

Mr. Merrimon objects.

The COURT: I don't know what it is, I would have to hear it before I know.

Mr. MERRIMON: What is the purpose of introducing this coupon?

Mr. RODMAN: I want to show that the offense was an act committed under and by virtue of the decree of this Court that he is being charged with. I am obliged to show that. It is the very ground of the petition.

The COURT: I will permit you to show that.

Exception by respondent. Exception allowed.

Mr. RODMAN: We offer the affidavit and warrant issued on the 18th day of July, 1907, together with the return. We offer the answer filed by the defendant in that case to show that the defense was set up in that cause, that they were acting under a decree of this court. We next offer the coupon which was used in evidence upon the trial. I will read it.

(Reads.)

We next offer the judgment and the mittimus.

238 J. B. WELLS, being duly sworn testified as follows:

Examined by Mr. RODMAN:

Q. You live in Asheville, I believe?
A. Yes sir.
Q. You swore out a warrant against Mr. Wood and Mr. Graham?
A. I believe their names were in the warrant.

Mr. MERRIMAN: We object as entirely collateral. That has nothing in the world to do with the case.

Mr. RODMAN: That is not with a view to attacking the judgment, but for the purpose of showing the number of prosecutions that have been or may be instituted.

The COURT: The Court would like to know about the matters thoroughly.

Exception by respondent. Exception allowed.

Mr. RODMAN: You were in the office of the Asheville Citizen at the time it was sworn out?
A. Yes sir.
Q. Mr. Reynolds was there?
A. Yes sir.
Q. Mr. Jones was there wasn't he?
A. No sir.
Q. Who else?
A. Mr. Cain, I remember.
Q. What Cain?
A. The editor of the Citizen.
Q. James H. Cain? Did you go from your office to the office of the Citizen with Mr. Cain?
A. No sir.
Q. Who went with you?
A. I don't remember whether I was by myself or not when we met. There's hardly a day passes that I don't go to the Citizen.
Q. Was Mr. Jones with you?
A. No sir, I didn't see Mr. Jones.
Q. Who else was there?
A. Well, there were people going in and out. It was in the editorial rooms, and people were passing in and out, I think, but who they were, I couldn't say.
Q. Where were you? What part of the room? At a desk, or where were the warrants sworn out?
A. I think I simply stood in the door in the office there talking.
Q. In the private editorial room.
A. Yes sir.
Q. With Mr. Cain?
A. Yes sir.
Q. And Mr. Reynolds?
A. I think possibly Mr. Reynolds. He was there. I don't know whether he came in after I did or not. I don't remember?

239 Q. You went there for the purpose of having the warrant sworn out?

A. I couldn't say that.

Q. Had you discussed the swearing out of the warrant before you went there?

A. I don't remember ever having mentioned it only as in conversation in the store. There have been a number of conversations in the store by different people in regard to swearing out warrants,—a number of them, and there has been and is every day so much talk that I can't remember distinctly the instances.

Q. Were any of these conversations with Mr. Reynolds or Mr. Cain in your store?

A. I never remember of talking with Mr. Cain about this matter except at this particular time.

Q. Were you sent for to go to the office of the Asheville Citizen?

A. No sir, not that I know of. If I was, I didn't get the word.

Q. How did you happen to go there?

A. As I say, I go there nearly every day. I pass there about six times a day.

Q. How did you happen to go into the private editorial room?

A. I frequently do that. Hardly a day passes that I am not in there.

Q. Was Mr. Reynolds in there when you first went in?

A. That I couldn't say.

Q. Let me ask you if you didn't say to Mr. A. S. Guerrard that you went from your office to the Asheville Citizen with some one, and that you had been sent for?

A. No sir. If I said anything of that kind, I never remember saying it. Mr. Guerrard and I were in the store together this morning after I saw you and I have tried to refresh my memory of every detail. I remember on the morning of the trial Mr. Guerrard was in the store, as he is frequently, and we walked from the store, I think to the Court room and he says that I made some statement about Mr. Reynolds or somebody about going in the Citizen office. That I haven't the slightest recollection of.

Q. You won't say that Mr. Reynolds didn't send for you?

A. I didn't get the word if he did.

Q. Who suggested the swearing out of the warrant when you were in the office of the Asheville Citizen?

240 A. I don't know that anyone suggested it. It was in a conversation, and something was said about a warrant and in the course of conversation, in the course of time, I was there and I signed the warrant. I think someone suggested something about making a test case of it and having a warrant.

Q. To make a test case.

A. Yes sir.

Q. That was Mr. Reynolds, wasn't it?

A. I couldn't say that.

Q. Or was it Mr. Cain?

A. I couldn't say it was.

Q. You know it must have been one of them?

A. Oh yes, it was one of them possibly.

Q. You wouldn't undertake to say which one? You were present

in Asheville on the 26th, 27th, 28th, and 29th of June weren't you, of 1907.

A. I think I was.

Q. You knew a suit had been instituted by the Southern Railway Company against the corporation commission to enjoin the passenger rates?

A. Only by heresay.

Q. You read it in the newspapers, didn't you.

A. No sir.

By the COURT: You are not represented by an attorney here?

A. No sir.

The COURT: I deem it my duty to say to you that you are not required to answer any question that would incriminate you in contempt proceedings.

Mr. MERRIMON: I would like to ask if this investigation has any bearing upon the case, or if it is simply an investigation in regard to his conduct. Has it got anything to *fo* with the Harmon case? If it has, I fail to see it so far.

Mr. RODMAN: Did Mr. Reynolds or Mr. Cain either one refer in your presence, that day or at any other time, to the order Judge Pritchard had made?

A. He did not. Neither of them, they never said anything to me about it.

Q. Did they ever mention anything about the suit by the railroad company?

A. Not that I know of to me.

Q. You are a newspaper dealer?

A. Yes sir.

Q. Mr. Caine, is a newspaper editor?

A. Yes sir.

Q. You sell his paper—you read it don't you?

A. Occasionally. The fact of the business is, I don't pay
241 very much attention to newspapers. I—don't have time.

Cross-examination by Mr. MERRIMON:

Q. Did you buy a ticket from the Southern Railway upon which the warrant was based?

A. Yes sir, I bought three. I paid $3.25, for three tickets to Turnpike.

Q. What would have been the fare at 2¼ cents?

A. I couldn't tell you.

Q. How far is Turnpike?

A. Fourteen miles.

The COURT: They gave you a coupon for the difference, didn't they?

A. Oh yes.

Mr. RODMAN: The first warrant was dismissed.

A. Yes sir.

Q. Without your knowledge?

A. Yes sir.

Q. The next day did anyone go to you and try to get you to swear out another warrant?
A. They did not.

242 J. H. WOOD, being duly sworn, testified as follows:—

Examined by Mr. RODMAN.

Solicitor BROWN: Judge Reynolds in testifying a while ago, made a mistake as to the place where the Wells warrant was issued. He wishes to correct it.
The COURT: Certainly Mr. Reynolds may make any statement.
Mr. REYNOLDS: My recollection is that the warrant was signed by Mr. Wells in the Citizen office.

Examination of Mr. WOOD by Mr. RODMAN:

Q. Mr. Wood you are the City Passenger Agent here?
A. District Passenger Agent.
Q. Mr. Wilson is passenger Agent where?
A. Depot Ticket Agent.
Q. You have charge of the *same* of tickets in Asheville?
A. Yes, sir.
Q. He is under you, I believe?
A. Yes, sir.
Q. Mr. Wood, since July 1st, have you sold any tickets at a rate greater than 2¼ cents without attaching thereto a coupon, such as was ordered by the Court to be attached?
A. Not in intrastate business.
Q. Have any been sold by any of your force to your knowledge or by your consent.
A. No, sir.
Q. Do you know from the reports about how many tickets are sold in intrastate business by the Southern Railway Company in North Carolina during a year?

Mr. MERRIMON: I don't think that has anything to do with it?
The COURT: I think it is very material you may take an exception if you desire.
Exception by respondent; exception allowed.

A. Over a million and a half.
Q. About 5000,000 a month is it?
A. Yes, sir.
A. About 5,000 a month?
The COURT: You mean tickets?
Mr. RODMAN: 5,000 tickets a month 5,000 a day. I should have said. Mr. Wood, were you present at the hearing of this
243 case when the warrant was issued on the affidavit of Mr. Harmon?
A. I was one of the defendants.
Q. You were present?
A. Yes, sir.

Q. Please state what Mr. Harmon said on the trial about the sale of the ticket and where it was to and whether or not he received a coupon.

Mr. MERRIMON: We object. I don't think it's proper to go into any evidence introduced on that trial.

The COURT: You have shown the coupon.

Mr. RODMAN: Yes, sir.

The COURT: You have indentified it as being the coupon on which the proceeding was instituted?

A. Yes, sir.

The COURT: Why go into it any further?

Mr. RODMAN: All right, sir, examine him gentlemen.

Cross-examination by Mr. MERRIMON:

Q. Have you sold any tickets since the 1st of July for 2¼ cents?

A. I have sold them for less than 2¼ cents. I don't remember whether there were any at exactly that rate.

Q. Regular transportation tockets?

A. Yes, sir.

Q. You charged Mr. Harmon, more than 2¼ cents for his ticket?

A. The rate prescribed by law, is more than 2¼ cents.

Q. Did you charge Mr. Harmon more than 2¼ cents for the ticket you sold him?

A. Yes, sir.

Q. How much more?

A. The difference between 2¼ and about 3 cents.

Redirect examination by Mr. RODMAN:

Q. That difference is what is represented by this coupon that was offered in the evidence up there?

A. Yes, sir.

Q. You didn't sell this particular ticket at all?

A. I did not, sir.

Solicitor Brown objects.

By Mr. MERRIMON: Did you sell this ticket?

A. I did not.

244 Solicitor BROWN: I object, it makes no difference whether or not he is guilty of this offense. The only question is, whether or not this Court has jurisdiction. His remedy is an appeal to the Superior Court and not by *Habeas Corpus*. The only thing to be determined is whether or not this Court has jurisdiction.

The COURT: Let's get down to the question involved in this case.

O. C. WILSON, being duly sworn, testified as follows:

Examined by Mr. RODMAN:

Q. You are one of the petitioners here. You were present at this trial before Mr. Reynolds, the Police Justice?
A. Yes, sir.
Q. Did you sell this particular ticket?
A. Well I was selling, at the time, I suppose I did.
Q. It was testified that you did sell it. Did you charge more than 2¼ cents?
A. Yes, sir.
Q. Did you give a coupon for the difference?
A. Yes, sir.
Q. You were acting at that time under the order of this Court?
A. I was.

Cross-examination by Mr. MERRIMON:

Q. Did you ever see the order of this Court?
A. Yes sir.
Q. When?
A. I think I had one or two.
Q. Did you ever read it?
A. Yes sir.
Q. Wasn't you acting under the instructions of some official instead of the order of Court?
A. No sir.
Q. When did you see this order, and how did you happen to see it?
A. I believe there was one or two sent to me at the office.
Q. Who by?
A. By Mr. Tayloe.
Q. Did you read them?
A. Yes sir.
Q. What did they say?
A. I can't tell you all they said.
Q. You were acting under the order of the Court in making the sale of tickets, and not the orders of the Railroad Company?
A. It was an order of the Court given down to me by the officials of the Railroad.

245 A. S. GUERRARD, being duly sworn testified as follows:—

Examined by Mr. RODMAN:

Q. Did you have any conversation with Mr. Wells about the warrant he swore out?
A. I did.
Q. When was it?

Mr. Merrimon Objects.
The COURT: What objections do you make?
Mr. MERRIMON: That it is immaterial and has nothing in the

world to do with the question. We are here required to answer a *Habeas Corpus* where the two prisoners, Wood and Wilson, are detained by a mittimus on a warrant sworn out by a man named Harmon. They were convicted and sentenced to the public road and I don't see where any conversation had with Mr. Wells has anything to do with the case.

Exception by respondent. Exception allowed.

A. The conversation took place on Tuesday morning, the 16th of this month, about 20 minutes to 9.

Q. In the City?

A. Yes sir.

Q. What was it?

A. Mr. Wells told me—We were speaking of the w-rrant. I stopped in there on my way to the Police Court. He told me the evening before he was approached by Judge Reynolds——

Mr. MERRIMON: Was Mr. Raynolds present at the time of this conversation?

A. He was not.

Mr. Merrimon objects.

Exception by respondent. Exception allowed.

Mr. RODMAN: Go ahead.

A. And that Judge Reynolds asked him, if he hadn't recently been on a trip to Turnpike, and he told him he had. He asked him how much he paid for his tickets and he told him how much. He then asked him if he (Wells) would make an affidavit to that effect and he told him he would, and together they went to the office of the Asheville Citizen where the affidavit was made.

By Mr. MERRIMON: What position do you occupy?

A. Law Agent, of the Southern Railway.

Q. How did you happen to engage in this conversation?

246 A. It was simply a personal conversation. I stopped in his store and the topic came up.

Q. Who brought it up?

A. I don't remember whether I brought it up, or Mr. Wells.

—— GRANT, being duly sworn testified:

Examined by Mr. RODMAN:

Q. Do you know G. S. Reynolds, the Police Justice?

A. I do.

Q. Did you have any conversation with him on Wednesday evening, as to whether or not a new warrant would be issued and the parties arrested?

A. On Wednesday evening about half past 6——

Mr. Merrimon objects.

The COURT: What do you offer this for?

Mr. RODMAN: I want to show it is the settled policy of the parties issuing these warrants to obstruct the decree of this Court.

Mr. CARTER: On behalf of Mr. Reynolds, it seems to me that it is

either an attack upon the conduct of a judicial officer. Mr. Reynolds can't reply to it——

M. RODMAN: All right, come down (witness withdrawn).

247 Mr. RODMAN: If your Honor please *pm* yesterday I only had with me the certified copy of the original bill, the decree and the writ of injunction, and I did not then know that the other papers in the case were present in the City of Asheville. I now ask leave of the Court to introduce the other papers introduced at the other hearing before your Honor, including the affidavit and answer.

The COURT: Oh yes.

Mr. MERRIMON: When were they filed here?

Mr. RODMA-: They were not filed here at all, bur they happen to be here for the use of the Judge. I didn't know it at the time.

Mr. MERRIMON: When were they filed at all?

A. At the original hearing June 26th.

Mr. MERRIMON: I mean the Ancillary Bill.

Mr. RODMAN: Last Monday, If your Honor please, I desire to offer copy of the News and Observer dated Tuesday Morning July 16th, containing letter from R. B. Glenn, Governor of North Carolina, to the Judges of the Superior Courts of the State, showing a settled policy to obstruct the jurisdiction of the Court.

Mr. MERRIMON: We object on the ground that it is not relevant. As I understand the question before this Court now is the discharge of two persons who were convicted in the police Court of this City charged with violation of the rate bill. I understand that to be the only question before this Court. I cannot understand how this testimony can be competent.

The COURT: There is one view of the case in which it may become competent. I will admit it.

Exception by respondent.

Exception allowed.

Mr. RODMAN: I offer copy of the Asheville Citizen of this morning showing the action of the Superior Court of Wake County in the case of State against T. E. Green and Southern Railway Company pending in the Superior Court of Wake County, for the same purpose.

Mr. MERRIMON: What is the purpose? I didn't understand the purpose.

248 Mr. RODMAN: The purpose is to show a settled policy on the part*y* of certain parties to obstruct the jurisdiction of this Court.

Mr. MERRIMON: There is no allegation made.

The COURT: Have you anything further to offer.

Mr. RODMAN: No sir.

The COURT: Have you anything to offer, Mr. Merrimon?

Mr. MERRIMON: No sir.

J. H. Wood, having been duly sworn, testified as follows:

Examination by Mr. J. G. Merrimon:

Q. Did you take an appeal from the judgment rendered by Judge Reynolds?
A. Did I take an appeal?
Q. Yes, sir. Did you appeal from his judgment to higher court?
A. No sir.
Q. Why not?

Objection by Mr. Rodman on the ground that why he didn't appeal is immaterial.

Judge Moore: We suspect he was advised by counsel. I expect that is about the way of it.

Mr. Merrimon: The purpose is this: The statute authorizing and creating Judge Reynolds' Court provides for appeal and provides for bond pending appeal, and the answer alleges that he could have given a bond and took appeal and his rights could be protected. We want to show that it was the settled policy not to take an appeal and have the case heard in this way.

The Court: I take it that for the purposes of this hearing it might be admitted that he would be entitled to an appeal.

Mr. Rodman: There is no question. The statute so provides. The statute is in.

Mr. Merrimon: I ask him, then, if he couldn't give any reasonable amount of bond?

Mr. Rodman: We object to that.

The Court: I sustain that objection. It is immaterial.

Exception by respondent—exception allowed.

249 *Evidence.*

U. S. Circuit Court. Filed Jul- 20, 1907. W. S. Hyams, Clerk.

Mr. Rodman: If your honor please, we first offer a certified copy of the original bill and the order made by your Honor and also the writ of injunction issued on that order in the Eastern District of the United States which bill was filed and decree or order made and injunction issued in the case of Southern Railway Company, Complainant, *v.* Franklin McNeill *et al.*

The Court: You intended to say Eastern District of North Carolina?

Mr. Rodman: Yes sir, the Eastern District of North Carolina. I also desire to offer the *answerary* bill and order signed by your Honor in the same case filed in the Western District at Asheville. We will next offer sir, Private Act of North Carolina, entitled an Act to establish within the City of Asheville a special Court to be called the Police Court, and prescribe the jurisdiction thereof, ratified the 4th day of March, 1905.

Mr. Merriman: What law is that?

Mr. Rodman: Private Laws of 1905, Chapter 35. I ask your

Honor to have sworn Mr. Reynolds, Mr. J. B. Wells, Mr. Harmon, Mr. A. S. Guerrard, Mr. Wood, and Mr. Wilson.

The COURT: Let the witnesses come around. (Witnesses sworn.)

250 *Motion by Respondent's Attorneys.*

We now interpose a motion, if there is any evidence here upon the question of the effect of this act upon the property of the railroad corporation, that if it tends to confiscate their property or to take their property or rights without due process of law, we move now to be allowed to continue this case and go into the evidence for the purpose of showing such thing to be the fact.

The COURT: Motion refused. Exception by respondent. Exception allowed.

251 *Bond.*

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

Circuit Court at Raleigh, Fourth Circuit.

SOUTHERN RAILWAY COMPANY,
against
FRANKLIN MCNEILL ET AL.

Prosecution Bond.

Know all men by these presents, that we, Southern Railway Company, as principals, and Henry W. Miller, as surety, are held and firmly bound unto the defendant- in the above entitle- action in the sum of two hundred dollars, to the payment of which we bind ourselves firmly by the presents.

Sealed with our seals and dated this 9th day of May, 1907.

The condition of the above obligation is such, that whereas the plaintiff- in the above named cause has brought an action against the said defendants therein, now if the said plaintiff shall prosecute its said action with effect, or, in case it fail therein, shall well and truly pay all such costs as shall be awarded and recovered against the said plaintiff- in said action, then the above obligation is to be void, otherwise it is to remain in full force and effect.

SOUTHERN RAILWAY CO., [SEAL.]
By N. B. RODMAN. [SEAL.]
H. W. MILLER. [SEAL.]

Taken and acknowledged before me, this 9th day of May, 1907.

H. L. GRANT, *Clerk*,
By GEO. TONNOFFSKI, *D. C.*

UNITED STATES OF AMERICA, *Eastern District of North Carolina:*

H. W. Miller, being duly sworn, says: That he is the surety whose name is signed to the within undertaking; that he is a resident of, and has property within, the State of North Carolina, to the amount of Two Hundred Dollars, not exempt from execution, and in excess of his debts and liabilities.

H. W. MILLER.

Sworn and subscribed before me, this 9th day of May, 1907.

H. L. GRANT, *Clerk*,
By GEO. L. TONNOFFIKI, *D. C.*

Indorsed on back: No. 295. Equity. In United States Circuit Court/ Eastern District of North Carolina. At Raleigh. Southern Railway Co. Against Franklin McNeil *et al.* Prosecution Bond filed May 9th 1907. H. L. Grant, Clerk.

252 *Subpœna.*

UNITED STATES OF AMERICA, *Eastern District of North Carolina:*

Circuit Court at Raleigh, Fourth Circuit.

The United States of America to Franklin McNiel, Samuel L. Rodger, Eugene C. Beddingfield, Robert D. Gilmer and Hayden Clement, Defendants, Greeting:

We command you, and every of you, that you appear before the Judges of our Circuit Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of the said Court in the City of Raleigh, in said District, on the First Monday in the month of June next, to answer the Bill of Complaint of Southern Railway Company, citizen and resident of the State of Virginia, filed in the clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such judgment and degree — shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal/ of the Eastern District of North Carolina to execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 9th day of May, 1907, and in the 131 year of the Independence of the United States.

Issued the 9th day of May 1907.

H. L. GRANT, *Clerk*,
By GEO. L. TONNOFFSKI, *D. C.*

253 Indorced on the Back.

Memorandum.

The within named Defendants are notified that, unless they enter their appearance in the Clerk's Office of said Circuit Court, at Raleigh, as aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against them, as confessed, and a decree entered accordingly.

H. L. GRANT, *Clerk*,
By GEO. L. TONNOFFSKI, *D. C.*

Marshal's Docket No. 295 Equity.

In United States Circuit Court, Eastern District of North Carolina, at Raleigh.

SOUTHERN RAILWAY COMPANY
against
FRANKLIN MCNEIL, SAMUEL L. ROGERS, ET ALS.

Equity Subpœna.
Returnable the first Monday in June 1907.
Original for Marshal's return.

CLAUDIAN B. NORTHROP,
W. B. RODMAN,
Solicitors for Complainant.

Received at Raleigh, N. C. May 9th 1907 and executed this day by delivering a copy of within Equity Subpœna to Franklin McNeil, Samuel L. Rodgers & Eugene C. Beddingfield, at their office, Raleigh, N. C., and on May the 10th, 1907, executed upon Robt. D. Gilmer and Hayden Clements by delivering a copy of within Equity Subpœna to Miss Sarah Burkhead, Stenograph- of said parties at office of Attorney General, Raleigh, N. C.

CLAUDIUS DOCKERY,
U. S. Matshal,
[SEAL.] Per P. A. MITCHELL,
Office Deputy Marshal.

Marshal's cost, $10.00.

Returned and filed May 10th, 1907.

H. L. GRANT, *Clerk.*

Office of U. S. Marshal, Raleigh, N. C. May 9, 1907.

254 In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET ALS., Defendants.

Knows all men by these presents that

Southern Railway Company, a corporation of the State of Virginia, the principal office of which is in the City of Richmond in said State, as principal, and The United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto the defendants, Franklin McNeill, Samuel L. Rodgers Eugene C. Beddingfield, Robert D. Gilmer, and Hayden Clement in the just and full sum of Ten thousand dollars, for the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, and each of our successors, firmly by these presents,

Sealed with our seals and dated this the 8th day of May in the year 1907;

The condition of this obligation is such that

Whereas a restraining order has been made it the above entitled case by the terms of which the defendants, and each of them, are restrained untill an application for an interlocutory injunction herein shall be determined, from doing or causing to be done, certain acts mentioned in said restraining order, now should said restraining order be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, then, if the above named Southern Railway Company shall pay, or cause to be paid, all damages caused by the issue of the said restraining order, and the costs on this cause in connection therewith, then this obligation to be null and void, otherwise to be and remain in full force and effect.

In testimony whereof the parties hereto have caused these *parents* to be duly signed in their respective names and their respect-
255 ive seals to be hereunto affixed, duly attested, this eight- day of May in the year 1907.

SOUTHERN RAILWAY COMPANY,
By A. B. ANDREWS, *First Vice President.*
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
[SEAL.] By E. LESLIE SPENCER, JR., *Attorney in Fact.*

Attest:
GEO. R. ANDERSON,
[SEAL.] *Assistant Secretary.*

Approved as a full compliance with the provision of the restraining order entered in this cause on the 8th day of May 1907, requiring the giving of a bond.
J. C. PRITCHARD,
U. S. Circuit Judge.

256 In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

THE SOUTHERN RAILWAY COMPANY, Complainant,

vs.

FRANKLIN MCNEIL, SAMUEL L. RODGERS, E. C. BEDDINGFIELD, A. D. GILMER, and HAYDEN CLEMENT, the First Three Constituting the Corporation Commission of North Carolina, and the said R. D. Gilmer Holding the Position of Attorney General of North Carolina, and the said Hayden Clement Holding the Position of Assistant Attorney General of North Carolina.

C. A. Reynolds, being first duly *srown*, says: That he resides in the State of North Carolina, County of Forsyth and has done so for many years: that he is largely interested in industrial plants and other concerns in that section of the State: that he is Vice President and director of The North Carolina Electrical Power Company. that he is familiar with the annual rate of interest charged upon money loaned in North Carolina, where the security is ample and sufficient, and that the said rate of interest for money loaned upon good security is six per cent., and he is informed and believes that many loans are made at a higher rate of interest that six per cent. he is familiar with what he considers a fair earning capacity for money invested in trade or industrial plants or manufacturies, and that where such business is conducted with the usual skill and with ecomeny that ten per cent. upon the money invested is a very low earning capacity; that he would consider ten per cent. a low earning capacity for money invested in an industrial plant where the same was economically operated and with usual skill.

C. A. REYNOLDS.

Sworn and subscribed to before me this the 21st day of June, 1907.

[SEAL.]

W. E. FRANKLIN,
Notary Public.

U. S. Circuit Court. Filed June 26, 1907. W. S. Hyams, Clerk.

257 In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

THE SOUTHERN RAILWAY COMPANY, Complainant,

vs.

FRANKLIN MCNEIL, SAMUEL L. RODGERS, E. C. BEDDINGFIELD, A. D. GILMER, and HAYDEN CLEMENT, the First Three Constituting the Corporation Commission of North Carolina, and the said R. D. Gilmer Holding the Position of Attorney General of North Carolina, and the said Hayden Clement Holding the Position of Assistant Attorner General of North Carolina.

John W. Fries, being first duly *srown*, says: That he resides in the State of North Carolina, County of Forsyth, and has done so for many years: that he is largely interested in industrial Plants and other concerns in that section of the State; that he is President and director of Arista Mills Company; that he is familiar with the usual rate of interest charged upon money loaded in North Carolina, where the security is ample and sufficient, and that the said rate of interest for money loaned upon good security is six per cent. He is familiar with what he considers a fair earning capacity for money invested in trade or industrial plant- or manufacturies, and that where such business is conducted with the usual skill and with eco*meny* that ten per cent. upon the money invested is a very low e-rning capacity: that he would consider ten per cent. a low earning capacity for money invested in an industrial plant where the same was economically operated and with the usual skill.

J. W. FRIES.

Sworn and subscribed to before me this the 20th day of June, 1907.

W. E. FRANKLIN,
Notary Public.

U. S. Circuit Court. Filed June 26, 1907. W. S. Hyams, Clerk.

258 In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

THE SOUTHERN RAILWAY COMPANY, Complainant,

vs.

FRANKLIN MCNEIL, SAMUEL L. RODGERS, E. C. BEDDINGFIELD, A. D. GLIMER, and HAYDEN CLEMENT, the First Three Constituting the Corporation Commission of North Carolina, and the said R. D. Gilmer Holding the Position of Attorney General of North Carolina, and the said Hayden Clement Holding the Position of Assistant Attorney General of North Carolina.

C. H. Ireland, being first duly sworn, deposes and says: That he is a resident of the City of Greensboro, State of North Carolina: that he is the General Manager and one of the officers of the Odell Hard-

ware Company, in the City of Greensboro: that he has resided in the said City of Greensboro for about twenty years. That he is also interested in many other enterprises in and around the said City of Greensboro and in the County of Guilford and elsewhere: that by reason of his position in the industrial world and in the world of trade, he is familiar with and knows the usual and ordinary rate of interest received and demanded upon money loaned upon good security in the section of North Carolina in which affiant lives: and that the usual and ordinary rate of interest is six per cent. That this affiant is familiar with what is considered a fair earning upon money invested in trade or upon money invested in industrial business or manufacturing and that this affiant would consider ten per cent. upon the capital stock or upon the money invested a very low average rate or earning for money invested in trade or manufacturies or commrese in that section of the State in which affiant lives, in which the business is economically operated and conducted with average skill, and this affiant knows of many instances where a rate of earning is much higher than ten per cent.

CHAS. H. IRELAND.

Sworn and subscribed to before me this 15th day of June, 1907.
[SEAL.] THOMAS P. HEALL,
Notary Public.

U. S. Circuit Court. Filed June 23, 1907. W. S. Hyams, Clerk.

259 In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

THE SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEIL, SAMUEL L. RODGERS, E. C. BEDDINGFIELD, A. D. GILMER, and HAYDEN CLEMENT, the First Three Constituting the Corporation Commission of North Carolina, and the said R. D. Gilmer Holding the Position of Attorney General of North Carolina, and the said Hayden Clement Holding the Position of Assistant Attorney General of North Carolina:

R. P. Rankin, being first duly sworn, deposes and says: That he is a resident of Gaston County, State of North Carolina, and has been such for quite a number of years: that the said county has a large milling industry, especially in the manufacture of cotton. That he is Treasure- of Ozark Mills (Cotton Mills) and connected with several other cotton mills: that by reason of his position as a manufacturer of cotton, in which business — has been engaged for a number of years, he is familiar with the rates of interest charged in North Carolina upon money loaned, and is more or less familiar with what is considered a fair earning upon money invested in commercial and manufacturing industries, and in trade, where the said business is economically managed: that the usual rate of interest in

this affiant's section of North Carolina is six per cent. (6%) per annum. He is informed and believes loans are frequently made, carrying interest in excess of this amount. This affiant considers that an average of ten per cent. (10%) upon the money invested, either in trade or commercial industries is a low return for the use of such money, when the said industries are economically operated and managed with reasonable skill and prudence. This affiant is informed and believe- that there are many industries in North Carolina which are making more than ten per cent. (10%) upon the money invested.

R. P. RANKIN.

Sworn and subscribed to before me this the 20th day of June, 1907.

E. G. McLURD,
Notary Public.

[SEAL.]

My Commission expires July 26, 1907.

U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

260 In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

THE SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEIL, SAMUEL L. RODGERS, E. C. BEDDINGFIELD, A. D. GILMER, and HAYDEN CLEMENT, the First Three Constituting the Corporation Commission of North Carolina, and the said R. D. Gilmer Holding the Position of Attorney General of North Carolina, and the said Hayden Clement Holding the Position of Assistant Attorney General of North Carolina.

State of North Carolina, County of Forsythe, and has done so for many years: that he is largely interested in industrial Plants and other concerns in that section of the State: that he is President and director of Bailey Brothers, inc. that he is familiar with usual rates of interest charged upon money loaded in North Carolina, where the security is ample and sufficient, and that the said rate of interest for money loaded upon good security is six per cent., and he is informed and believes that many loans are made at a higher rate of interest than six per cent. He is familiar with what he considers a fair *eraing* capacity for money invested in trade or industrial plants or manufactories, and that where such business is conducted with the usual skill and with economy that ten per cent. upon the money invested is a very low earning capacity: that he would consider ten per cent. a low earning capacity for money invested in an industrial plant where the same was economically operated and with the usual skill.

M. D. BAILEY.

Sworn and subscribed to before me this the 20th day of June, 1907.

[SEAL.] D. RICH,
Notary Public.

My commission expires Oct. 12, 1908.

U. S. Circuit Court, Filed Jun. 26, 1907. W. S. Hyams, Clerk.

261 In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

THE SOUTHERN RAILWAY COMPANY
vs.
FRANKLIN MCNEIL, SAMUEL L. ROGERS, E. C. BEDDINGFIELD, A. D. GLIMER, and HAYDEN CLEMENT, the First Three Constituting the Corporation Commission of North Carolina, and the said R. D. Gilmer, Holding the Position of Attorney General of North Carolina, and the said Hayden Clement, Holding the Position of Assistant Attorney General of North Carolina.

L. L. Jenkins, being first duly sworn, deposes and says: That he is President of the First National Bank, situated in the town of Gastonia in the County of Gaston: that said County of Gaston is one of the largest cotton mill manufacturies in the south. That there are more cotton mills situated in Gaston County then in any one County in the State of North Carolina, and more, as he is informed and believes, than in any other county in the South. That by virtue of his position as President of the said Bank, he is familiar with the rate of interest charged upon loans made in North Carolina. That the rate of interest fixed by law is 6%; that by reason of his position he is familiar with the various industries in Gaston County, and especially the cotton mill industry, and he is familiar with the manufacturing industries in this section of the state and, according to affiant's best judgment, the return on capital invested in North Carolina in industries which are economically operated and managed with fairly reasonable skill, will average over ten per cent. (10%) and in many instances running as high as fifteen or twenty per cent., or even higher. That he is also familiar with the returns upon capital invested in industries generally, and in trade in his section of the State, and he will say that, according to his best judgment and belief, an average of (10%) ten per cent. is a low average return upon money invested, either in street or commercial, industries in North Carolina, where the same are economically
262 operated and with fair skill.

L. L. JENKINS.

Sworn and subscribed to before me, this the 20th day of June, 1907.

[SEAL.] E. G. McLURD.

U. S. Circuit Court. Filed Jun. 26, 1907. W. S. Hyams, Clerk.

263 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET ALS.

The affiant, Chas. A. Wickersham, states that he is a resident of College Park, Fulton County, Georgia, and is President and General Manager of the Atlanta & West Point Railroad Company and the Western Railway of Alabama, with office in the City of Atlanta, Georgia.

Affiant states that he has had about twenty six years of railroad experience, part of which time he was employed on the Pennsylvania Railroad as telegraph operator; employed as train and chief despatcher on the Burlington; employed as train master on the Georgia Pacific; as Superintendent of the Alabama & Great Southern, and as president and General Manager of the Atlanta & West Point Railroad Company and the Western Railway of Alabama.

Affiant states that in the performance of his duties it has been necessary for him to consider, examine and determine questions affecting the transportation business upon the railways with which he has been connected. Affiant states, further, that he has given consideration and study to the relative transportation expense of local and through traffic. Affiant states further, that the large preponderance of what is known — "traffic" is interstate business,—that is, traffic mov- — points of origin and destination in different States; and that a large proportion of the State business is local traffic,—that is, traffic with points of origin and destination within one State, and that there is a close relationship between State and local business and between interstate and through business. Affiant states that the cost of operation of through and local business by the same engine and with the same number of cars, with same crew, is not the same, for various reasons, and that local freight trains cost more to handle than through freight trains with the same number of tons of freight the same number of miles; and that while it is somewhat difficult to intelligently state this difference in cost by reason of the revenue feature, as it is practically impossible to make a comparison of a freight train with through tonnage with a freight train with local tonnage, netting the same revenue, for the reason that a local freight train is from necessity compelled to handle considerable tonnage in the way of empty cars to and from local points to fill local orders, provision for which has to be made before leaving terminals. Affiant says, however, that from his knowledge and experience, his best judgment is that the average cost of handling a local freight train more than a through freight train with the same tonnage of the same number of miles would be about twenty two

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per cent. per mile greater. Affiant says that some of the items which make the handling of local freight trains more expensive than the handling of through freight trains are, in the first place, it is necessary to pay a higher rate of wages to enginemen and train crews; also, to provide one or more brakemen on local freight trains than is necessary on a through freight. A local freight train, taking longer to cover the same number of miles, than a through train, and doing switching at all stations, necessarily consumes more coal and
265 other train supplies than a through train. Again, the wear and tear on locomotives and cars in local service is much greater than in through service, for the reason that couplings have to be made and broken, switching service causes sudden and heavy strain and surges on locomotives and cars in making frequent and sudden stops and starting of train at each and every station, increasing largely the maintenance of equipment. Additional force must be employed to load and unload freight at the various stations, additional facilities in the way of storage rooms, tracks, etc., must be supplied, stationery and clerical force must be provided to make out bills of lading and way bills for each and every article shipped, and entries made at the delivering station and expense bills prepared, which consumes a great deal of time and requires large force. Practically none of this service is necessary in through or interstate business. Through trains are really made up at one terminal and run through to the other without stops other than for water and fuel and meeting and passing other trains. The expense incident to the constant stopping and starting of local trains is very great, as above stated, both in the wear and tear on equipment, and the increased liability to accident to employees and damage to equipment, as well as the merchandise which the car contains. To illustrate further—it is necessary to use great care at the terminal station in loading merchandise to see that it is correctly and safely packed in the car, that breakable articles are not loaded in close proximity to other articles which would be liable to damage same. When this car is opened at the first station, it is, of course, necessary to remove freight consigned to that station, which creates a vacant place in the car, allowing the other freight — shift, if the greatest care is not exercised, to its damage. Affiant states that they estimate their local claims on A. & W. P. R. R. and W. R. of A. to be twenty per
266 cent. greater than on business which they consider very conservative. Frequently truck and train hands, in removing freight, break same, notwithstanding the fact that they exercise as much care as possible, under the circumstances.

Affiant says, further, that the opinion as given above in this affidavit as to the greater cost of State or local business over through or interstate business is based upon the assumption that each train, both State and interstate, has the same tonnage and nets the same revenue. But this assumption is rarely, if ever, correct; and that his experience and observation show that the through or interstate train almost always carries a greater tonnage and produces a greater revenue than the local or State train. Affiant says, taking into consideration the revenue produced by the through or interstate trains

as compared with the revenue produced by the local or state trains, that the cost of doing the State or local business is very much greater in proportion to earnings than the cost of doing the through or interstate business. In fact, affiant is of opinion that in proportion to revenue the cost of doing the State business is several times as much as the cost of doing the interstate business. And further affiant saith not.

CHAS. A. WICKERSHAM.

Subscribed and sworn to before me by Chas. A. Wickersham this 11th day of June, 1907.

W. MOULTRIE HITT, JR.,
Notary Public, Fulton Co., Ga.

267 In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET AL., Defendants.

Affidavit.

L. F. Sullivan being first duly sworn, deposes and says:

I am Comptroller of the Chesapeake and Ohio Railway Company, and as such have charge of the accounts and books of the Company, having occupied that position since November 15, 1897. I have had about thirty-four or thirty-five years experience in the railroad business. I began in the railroad service in March, 1872, at the Indianapolis, Indiana, freight station of what was then known as the Indianapolis, Cincinnati and La Fayette Railroad, now commonly known as the Big Four, and remained there until 1880, occupying various clerical positions, including the position of Chief Clerk. In September, 1880, I was appointed Freight and Ticket Agent of the same company at Sheldon, Illinois, and remained there until November, 1881, when I was appointed Freight and Ticket Agent of the same company at Kankakee, Illinois, and remained there until June, 1882. In June, 1882, I was appointed Paymaster and Travelling Auditor, with headquarters at Cincinnati, and occupied the dual position until 1888. In the meantime, in March, 1886, I was app-inted Superintendent of Agencies of the same company, in charge of the local freight and passenger business,
268 and the appointment of agents on the line. In April, 1888, I was made Freight and Ticket Accountant of the same company, and remained in that position until July 1, 1889, when I was made Auditor of the Chesapeake and Ohio Railway Company; and on November 15th, 1897, was made Comptroller, which position I have occupied since that date.

I have given a great deal of consideration to the question of the comparative cost of doing local business with the cost of doing all the business of a railroad, and, while in my opinion it is impossible

to state such cost accurately I think it is possible to arrive at safe minimum of such cost. Unquestionably the cost to do local business is substantially greater than the cost to do the entire business of the company. My reasons for so thinking are principally, the increased wages paid employees in the local train service, the added cost of the additional employees in the local train service, the light loading of trains and cars engaged in the local service as compared with the loading of those engaged in the through train service, the shorter haul with lighter loads, or smaller density of traffic, of the local train over the through train, the additional station force required in the handling of the local traffic, the increased consumption of fuel and other train supplies in the local service, the increased cost for the loading and unloading of this class of traffic, and the increase in the maintenance of way and equipment expenses. In addition to this, the gross earnings of the through freight trains are very much larger than the earnings of the local freight trains, and I am convinced that the excess cost of doing local business over the
269 average cost of doing all business of a railroad company is conservatively stated at a minimum of fifteen cents to earn one dollar.

L. F. SULLIVAN.

Subscribed and sworn to before me this 14th day of June, in the year, 1907.

[SEAL.] COLUMBUS A. CANEPA,
Notary Public.

My commission expires Sept. 17th, 1907.

270 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEILL ET AL., Defendants.

Affidavit.

The affiant, A. H. Plant, being duly sworn, deposes and says:

That he is, and for some years past has been, Comptroller of the Southern Railway Company, and, as such, has supervision over its accounts, and charge of its books. That he has had a large experience in railroad accounting, and also in the practical handling at local stations of freight for transportation, including the loading, unloading, receipt, and delivery of such freights.

That he has already made an affidavit which has been filed in this case, in which it is stated that the operating cost, exclusive of taxes and improvements and betterments, to earn one dollar of in-

trastate revenue in North Carolina for the year ended June 30, 1906, was not less than 86.35 cents., it being further stated that, while it is impossible to state the exact cost to earn one dollar of intrastate revenue, it is certain that it cost much more to do so than the average cost to do all business, and at least the above mentioned figures, as this affiant verily believes.

The affiant further states that he believes, for the following
271 reasons, among others, that the cost to earn a dollar of intrastate revenue in North Carolina for said year was not less than the above mentioned minimum;

While the rates for local freight per ton per mile are generally higher than the rates per ton per mile for through freight, the revenue per train of local freight, notwithstanding the higher rates, is greatly less not only than the revenue per train from through freight, but also greatly less than the average revenue per train for all business. This follows from these considerations:

A through train is loaded at one terminal and runs through with little change of loading to at least one other terminal. In other words, with rare exceptions (such exceptions being due to an occasional car being put off at a junctional point or for some such reason), it hauls its whole load for the whole distance between terminals. This, therefore, gives to the train crew, to the engine, and to the equipment, a uniform and substantial use during the whole of the distance mentioned, and the lading being practically uniform, either to the full capacity of both engines and cars, or vastly more nearly so than in the case of a local train, the gross revenue return from such train is greatly more than the revenue return from a local train, which latter is used to do the work from station to station along the line of its run, and one or more cars may be unloaded of half their load at the first station out and run with this depleted load two or three stations further, when nearly the whole of it may be taken out, and run the balance of the way with an exceedingly small amount of freight. In other words, on a local train the process of unloading is going on at each station on the run, and statistics show that on local trains the maximum revenue or tonnage capacity of engines and cars is seldom, if ever
272 obtained, and that a very large percentage of the run is practically empty. This indicates, and statistics amply show, that the percentage of lading to the full capacity of a through train is very much greater for the full distance than the percentage of loading on a local train is for any considerable part of the distance, and, in addition to that, that the lading of the through train is practically maintained for the whole distance, and the lading of the local train, which is generally light, is constantly shifting, and, notwithstanding the fact of the amount of freight that may be picked up at intervening stations, does not give to the local train anything like the percentage of efficiency possessed by the through train. Moreover local trains are obliged to run at regular times every week day, on schedules, whether there is business to justify the starting of the train from the terminal or not, while, on the contrary, a through train starts out only when the freight is there

and ready to be carried. In addition to this, the actual cost incident to the movement of a through train is very substantially less than the actual cost of handling a local train. For example: A conductor on a through train is paid on the Southern Railway $3.18 for a hundred mile run, or eleven hours' work, whereas, a conductor on a local train is paid $3.80 for ten hours' work, and a run which is usually not over sixty to seventy miles; the through divisions on the Southern Railway, which is the unit of handling for the through trains, being divided up into shorter runs for the local trains. The above figures mean that the through conductor gets 29 cents an hour, whereas, the local conductor gets 38 cents an hour, and the distance covered by the through conductor is probably one and one half times as much as the distance covered by the local conductor. These figures as to conductors illustrate the scale of wages as to the other employees on the train. In addition to this,
the engine on a local train must be kept under steam, even
273 while it is standing at stations loading and unloading local
freight, and doing shifting work on the way, which means that the engine costs for fuel, oil, waste and other engine supplies are being consumed on the local train for the shorter distance to the same, if not to a greater, extent, as compared with similar costs on engines on through trains for the longer distance. Furthermore the pay of enginemen and trainmen continues during such stops on local trains, while the pay of enginemen and trainmen on through trains is utilized in earning revenues from continuous movements between termini. In addition to this, there are a larger number of men required to run a local train than there are to run a through train. For example: Two brakemen will run a through train, and together they will receive for the run $3.50, the rate being for the above mentioned one hundred miles, or eleven hours; whereas, it takes three brakemen on the local train who will together receive $6.45 for the local run of about sixty to seventy miles, or ten hours. It should be noted, also, that very much the larger proportion of the expense of local stations is due to the handling of the local business, such local stations not being much used for through business. The greater cost of doing local business as compared with through business is likewise caused to a substantial extent by the greater number of handlings that local freight is necessarily subjected to as compared with through freight. Through freight is usually loaded on cars by the consignor and unloaded by the consignee. Local freight is both loaded and unloaded, as a rule, by the company. Every time this freight is handled there is an actual cost for the handling, in addition to which there is an increased chance of injury, miscarriage and loss. Wherever there are many transfer
points, such as are especially numerous in the State of North
274 Carolina, the number of these handlings is increased, and the
consequent increased cost of handling and the consequent increased risk of loss, damage and miscarriage naturally follow. Moreover, at terminal points where trains are to be started to go through without change to another terminal point, it is possible to gauge with substantial accuracy the amount of labor that will be

necessary to perform the service, and to regulate such labor costs to the necessities of the work, whereas, at the local stations, the maximum amount of service must be permanently established and maintained, so that the maximum cost is continuing, whether the traffic justifies the cost or not. Taking all these matters (and others which might be mentioned), into consideration, namely, the actually larger revenue from a through train, the actually smaller cost of handling the through train as compared with the local train, the actually smaller expense of loading and unloading a through train as compared with a local train, the actually larger expense of handling local traffic as compared with through traffic, and the greater risk of loss, damage and miscarriage of local traffic, it is manifest to my mind, and I believe it to be generally accepted by those who have made a study of the subject, that the cost of doing local business is very much greater than the cost of doing through business.

The substantial characteristic of the intrastate business in North Carolina is that it is local business and done on local trains. While, of course, there are some exceptions to this, and some of it is handled on through trains, those exceptions are so small that they are negligible for the present purpose, and, for the purpose of considering the cost of doing the business, the intrastate business in North Carolina may be considered as substantially local business. The interstate business in North Carolina is made up of both local and
275 through but a very large proportion of it is handled on through trains. I am fully convinced that the cost of earning one dollar from intrastate, or local, business in North Carolina is at least nineteen or twenty cents more than the cost of earning one dollar on system business.

I arrive at this conclusion as to the minimum amount of such excess by comparison of a great many train movements and by an analysis of the expense incident thereto, and my firm belief is that this difference is much more than the fifteen cents used in my calculations submitted in my former affidavit in this cause, instead of less; in fact, the result of my experiments and observations establishes to my entire satisfaction the fact that this excess amounts, as above stated, to at least nineteen or twenty cents more to do intrastate business in North Carolina than the general System average. The general System average expense of doing business for the year ended June 30, 1906, without including anything for taxes or anything for betterments and improvements, even for those not capitalized, was 71.35 cents, and in making an addition of fifteen cents to this average I am convinced that I am making an addition less than the actual increase of expense to earn a dollar of intrastate revenue. In making this addition of a minimum of fifteen cents, and making the foregoing estimate of an addition of a minimum of between nineteen and twenty cents, I have borne fully in mind the difference in the rates, this difference in the rates being very much more than overcome by the larger train revenue on the average business of the company over the train revenue from the intrastate business in North Carolina.

The results stated in this affidavit have been reached after an earnest study and consideration of this subject recently made. The question of what the increased cost of doing intrastate business over other business of the company would amount to was
276 treated for several years in the accounting department of this company on the basis of a mere estimate, without thorough study or analysis, and reports which have been made to the Corporation Commission of North Carolina were merely upon an assumed basis, based upon what was allowed by the Supreme Court of the United States in the case of Smythe *v.* Ames, 169 U. S., where the court used the following language:

"That conclusion was based largely upon the figures presented by Mr. Dilworth, while he was secretary of the state board of transportation, as well as a defendant and one of the solicitors of the defendants in these causes. He was a principal witness for the board. His general fairness and his competency to speak of the facts upon which the question before us depends are apparent on the record. He stated that the average reduction made by the statute on all the 'commodities of local rates' was 29.50 per cent.; and this estimate seems to have been accepted by the parties as correct. He estimated that the percentage of operating expenses on local business would exceed the percentage of operating expenses on all business by at least ten per cent., and that it might go as high as twenty per cent., or higher. And this view is more than sustained by the evidence of witnesses possessing special knowledge of railroad transportation and of the cost of doing local business as compared with what is called through business. Indeed, one of these witnesses states that the cost of carrying local freight is four times as much as the cost of through freight per ton per mile; another, that the cost of the short haul is 'reasonably double the long haul.' If due regard be had to the testimony—we have no other basis for our judgment—we are not permitted to place the extra cost of local business at less than ten per cent greater than the percentage of the cost of all business."

As no account of the difference in such costs was kept upon the books of this company and no attempt made in the company's books to separate the cost between the interstate and the intrastate business, when called upon for statements of these expenses by the North Carolina Commission, such statements were necessarily made upon an assumed basis, with the statement that the results were approximate. And the basis assumed for these reports in North Carolina was the minimum amount stated in the decision above referred to of the Supreme Court of the United States in Smythe *v.* Ames, 169 U. S. Subsequent investigation and study of the situation and consultation with men of experience have con-
277 vinced me that the estimated basis used in the reports made to the Commission in North Carolina is entirely too small, and that the minimum should not be less than is given in this affidavit. In fact, when all the conditions are considered and all the elements of increased expense are given their due weight, I believe that the estimate given in this affidavit will be considerably

below what is the real cost of doing such business. It is impossible to arrive at such costs accurately, as there are many of the elements of the expense which are common to all classes of business, and a division of expenses thus common to all classes of traffic must be made more or less upon arbitrary lines. For example: The general expense of doing all the business of the Company cannot, with accuracy, be allocated as between the different classes of business, and the same is true of other elements of expenses, such as maintenance, but it is safe to say that a reliable minimum can be reached, and this minimum is not, in my judgment, after much consideration of the subject, less than that above mentioned. This estimate of a minimum makes no allowance whatever for any increased cost of maintenance due to the increased wear and tear on the roadbed and equipment incident to the more frequent starts and stops in connection with intrastate business.

In my judgment, it is impossible to approximate, with any confidence, the cost of doing passenger business separately from the cost of doing all business; but the above mentioned estimate of a minimum treats the business of the railroad as a whole, and includes passenger and freight revenue and revenues from other operating sources.

The earnings from passengers of passenger trains in North Carolina, embracing both interstate and intrastate passenger business, are less than one dollar per train mile, and it is the usually accepted opinion among railroad men that passenger train
278 which does not earn from its passengers more than a dollar per mile is not a profitable train, the general impression being that a passenger train earning less than one dollar per train mile from passengers is run at a loss. Whether this be actually true or not, I believe it to be certain that it costs to earn a dollar of every class of passenger train revenue, intrastate as well as interstate, more than the above mentioned figures of 86.35 cents.

A. H. PLANT.

Subscribed and sworn to before me this 10th day of June, in the year 1907.

[SEAL.] ALFRED H. OLIVER,
Notary Public.

279 The undersigned, being first duly sworn, state severally that they have had much experience in railroad accounting, and have given much consideration to the question of the difference in cost of doing local business over the average cost of doing all business of a railroad, and have given much study to the subject. They further severally state that they are convinced, from this study, and from their experience, that the cost of doing such local business over the average cost of doing all business of a railroad is very considerable, and, having read the within affidavit of Mr. A. H. Plant, state they they agree with his conclusions, and that the minimum of nineteen or twenty cents of additional cost to earn a dollar of local revenue over the average cost for the system, is, in their judgment,

entirely conservative, and that, in their opinion, such excess cost is greater, rather than less, than the amount mentioned in the said affidavit of Mr. Pla[illegible]

FRANK MAY,
General Auditor, C. R. I. & P. R'y Co.
ERASTUS YOUNG,
General Auditor, W. P. R. R. Co. and Southern Pac. Co.
CONF. KREB,
Comptroller, Illinois Central R. R. Co.

280 FRANK MAY.
ERASTUS YOUNG.
CON. F. KREBS.

STATE OF NEW YORK,
City of Buffalo, County of Erie, To wit:

Before me, Wm. A. Angus, a notary public in and for the City of Buffalo and the State of New York, came each of the persons whose names are above subscribed and subscribed and swore to the foregoing affidavit this 14th day of June, in the year 1907.

I certify that my commission as notary public expires on the 30th day of March, in the year 1909.

Given under my hand and official seal this 14th day of June, in the year 1907.

[SEAL.] WM. A. ANGUS,
Notary Public.

281 In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEILL ET AL., Defendants.

The affiant, George B. Harris, states that he is president of the Chicago, Burlington & Quincy Railway Company with office at Chicago, Illinois, and that he has been in the railway service since 1866, with the exception of a short time, and during that period has had charge of various departments of railroad work and has had general charge of traffic and operating departments for some years last past, and has had occasion to consider various questions that arise in the operation of railroads, and among others the relative revenue arising from and the expense connected with the conducting of local and through traffic, by local traffic meaning, such as is picked up from or delivered to the intermediate local stations as distinguished from that to & from important terminals where it is handled in large volume and consequently at the minimum of expense.

Affiant further says that in his opinion the expense of receiving and delivering local business in the volume in which it is usually handled is at least three times as great as the expense connected with

the handling of through business and business between large or important points where, while the terminals are expensive, the volume of traffic is large and the facilities are such that the unit of expense is obviously much less than what may be termed the retail trade of local stations.

282 And further this affiant saith not.

GEORGE B. HARRIS.

Subscribed and sworn to before me this 18th day of June, 1907.

[SEAL.] J. H. PETTIBONE,
Notary Public.

283 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEILL ET ALS.

The affiant, Wm. H. Truesdale, states that he is the President of the Delaware, Luckawanna & Western Railway Company, with his office in the city of New York, N. Y.

He states that he has been engaged in the railroad service, in various capacities, for a great many years, and that he has made an extensive study and given extensive consideration to the various questions that arise in the operation of railways; and that the various positions that he has held, and the duties devolving upon him in those positions, have made it necessary that he should do so. He states that he has been connected with the Traffic Departments, Operating Departments, Accounting Departments, Treasury Departments, and has also had charge of maintenance. He states that he has given study to the question as to the cost of doing local business as compared with the cost of doing through business in comparison with the earnings on local traffic and the earnings on through traffic; and he states that, in his opinion, the expense of doing local business is much greater than of doing through business; and that, while it is somewhat hard to say what this difference is with any degree of accuracy, in his opinion a very conservative estimate of the difference in the expense of doing what is termed "local business" as compared with the expense of doing what is termed "through business"

284 is somewhere in the neighborhood of two or three times as much for the local as for the through; that there are many items of expense that enter into the handling of local business that do not enter into the handling of through business; and that the chief difference, in his opinion, is in the trains and carloads, that a through train can be loaded to the full capacity of the engine, and usually is, and is usually transported to destination—from beginning

to end—with a full load, while the local train, on the other hand, may start with a train full, which is very rarely the case, and, by the time it gets through its run, have practically nothing on the train, and *vice versa;* it may start with nothing and at the end of its run may have a full train; as a general rule, however, local trains run lighter over their entire run than through trains, and if you get an average of from one half to one third of the engine's capacity in the local train you are doing very well. He states that, in transacting the local business, the expense of switching and the risks incident thereto are very much greater than on the through train; that the handling of freight and the labor incident to it is much more in the local than in the through business; that the men handling local freight trains are paid necessarily more than those handling through trains, for the same distance run.

Affiant states, further, that, in his opinion, on a railroad where a large preponderance of the through business is interstate and only a small portion is state, and where a large preponderance of the state business is local and only a small proportion is through, that these facts, while they may to some immaterial extent reduce the excess cost of state business over interstate business, yet they will not do so materially and that, in such a case as just stated, in affiant's opinion, from his many years' experience and observation in the railroad service, the cost of doing state business is at least twice as much
285 as the cost of doing interstate business. And further affiant saith not.

W. H. TRUESDALE.

Subscribed and sworn to before me this 10th day of June, 1907.

[SEAL.] JOSEPH FULL,
Notary Public, New York County.

286 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States, Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET AL., Defendant-.

Affidavit.

The affiant, J. M. Culp, being first duly sworn, states that he is Vice President of the complainant, Southern Railway Company, in charge of its traffic—freight and passenger; that during the year ended June 30th, 1906, and since, and for some years prior thereto, the said Southern Railway Company owned, operated and controlled lines of railroad which constituted the system known as the Southern Railway in the states of Virginia, North Carolina, South Caro-

lina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Indiana and Illinois, which said lines are continuous, except that it has no connection by rails owned by it between that part of its system lying in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi and Tennessee, and that part of the system lying in the states of Kentucky, Indiana and Illinois.

The affiant further states that the said Southern Railway Company owns, operates and controls 1,456.72 miles of railroad within the State of North Carolina, which form a part of the continuous system of the road of the said southern Railway Company lying in the states of Virginia, North Carolina, South Carolina,
287 Georgia, Florida, Alabama, Mississippi and Tennessee, and that it so owned, controlled and operated the same for some years last past, and in addition to intrastate business in North Carolina it does a large interstate business into and from said state and through said state and in and between all the other states aforesaid and other states of the United States, and also a large foreign commerce with other co-ntries.

The affiant further states that he is acquainted with the freight tariff of the Southern Railway Company as applicable to intrastate shipments within the State of North Carolina—as such freight tariff existed during the whole of the year ended June 30, 1906, and being the same which now exist-. The affiant states that none of the rates in said tariff are greater than the service performed, and none of them are in any respect unjust or unreasonable; to the contrary, the affiant states that many of said rates are unjustly and unreasonably low and that substantially higher rates than these would be both just and reasonable for the service performed, and in consideration of the property employed in such service, and said rates do not make a fair, just and reasonable return for the services performed in consideration thereof, and were fixed under conditions which have, since they were fixed, so changed as to make them no longer justly, fairly and reasonably compensatory to the said Southern Railway Company.

The affiant further states that he is well acquainted with the passenger tariff of the said Southern Railway Company for intrastate business in the State of North Carolina; that said passenger tariff—as it now exists,—is in no respect unjustly or unreasonable high nor greater than the service performed in consideration
288 thereof is justly and reasonably worth, and no greater than will return a fair compensation for the property employed therein.

The affiant further states that since said freight and passenger rates were fixed that the operating expenses of the said Southern Railway Company have largely increased; that it is compelled to pay more for the services of its employees and for the purchase of materials and supplies which are necessary to the operation of the railroad and keeping the same in good order and condition.

The affiant further states that there is no reason to believe that in the near future the amount of traffic—freight and passenger—

to be handled by said Southern Railway Company will be at all sufficient at the rates now charged to return to the Southern Railway Company a fair compensation for its property employed in the business of intrastate transportation within the State of North Carolina.

The affiant further states that if its said freight and passenger rates should be reduced as required by the laws of the State of North Carolina there would result not only a diminution of revenue from intrastate traffic, but a diminution of revenue from passenger and freight traffic going into and out of and through said State of North Carolina; that interstate rates are made, in many instances, upon the combination of intrastate rates with other rates, and intrastate rates have at all times a most important bearing and influence upon interstate rates.

The affiant further states that the inevitable effect of the diminution of its freight and passenger tariff intrastate will be to diminish its interstate earnings and that to a material and important degree.

The affiant further states that the putting into effect of the rates so ordained by the State of North Carolina—passenger and freight—
will have a large and important influence to the injury of
288½ the capacity of the Southern Railway Company to conduct
its interstate operation and will largely and to an important degree affect its ability to efficiently conduct its interstate business.

The affiant further states that he has been connected with the Southern Railway Company, in charge of its tariff for many years last past and is thoroughly familiar with the conditions of such freight and passenger tariff.

And further the affiant saith not.

J. M. CULP.

Subscribed and sworn to before me this seventh day of May, in the year 1907.

[SEAL.] ALFRED H. OLIVER,
Notary Public.

289 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEILL ET ALS.

The affiant, Richard V. Taylor, states that he is a resident of the city of Mobile, Alabama, and is General Manager of the Mobile & Ohio Railroad Company; that he has been engaged in the railroad business, in various capacities, for about thirty years, during most of all of this time he has been in the Accounting and Operat-

ing Departments of the Mobile & Ohio Railroad Company; that he is familiar with the operation of railroad trains, and with transportation by railroad trains of both passengers and freights; that he is familiar with State and local business and interstate and through business; that there is a close relationship between State and local business, and that there is also a close relationship between interstate and through business; that the expense of transporting State and local business is usually radically different from the expense of transporting the same volume of interstate and through traffic; that the cost of handling State and local freight traffic is, under usual conditions, greatly in excess of the cost of handling through or interstate traffic; that, in his opinion, if a train doing local business and another train doing through business were exactly the same as to volume of traffic handled, under
290 usual conditions the train doing local business would cost considerably more than the train doing through business, for the following reasons:

First, the speed of the through train is usually more than one hundred per cent. greater than the speed of the local train. This, as a rule, results in the crew of the local train being paid the minimum amount for a day's work, instead of for the actual service rendered. For example: most contracts of railroad companies with their trainmen provide for a mileage basis, and also that no trip is to be paid at less than the rate for one hundred miles, and as this one hundred miles, must be run within a certain limit, the local train crew is almost invariably paid for one hundred miles of service, when considerably less than this is actually performed.

Second, a most important difference in the cost between through and local trains is the necessity of the frequent stops of the local as compared with the through train, and the consequent loss of time and inertia, the latter of which must be made up by a considerable increase in the amount of fuel consumed. In the stopping of freight and passenger trains at small stations it has been carefully estimated that the delay and lost inerita is equivalent to the running expense, for freight trains, for four miles, and for passenger trains of two miles. As the mere operating expense of freight and passenger trains is approximately fifty cents per train mile, it can be seen that the expense to the railroad of stopping a freight or passenger train to pick up a small number of passengers or a few hundred pounds of freight to be transported for a short distance is often in excess of the entire revenue received by the railroad company for such transportation.

The necessities for local service also require the construction of side tracks, the cost of which relative to use is very much
291 greater than at terminal points, where through cars in large numbers are switched into train order upon tracks constructed for that purpose. The requirements of local service also are such that local trains must stop for the purpose of switching cars into and out of sidings, as well as re-arranging trains to accommodate such shipments under conditions which make the cost of this service relatively greater than at terminal points where it

is practicable to employ an engine especially constructed for the service.

For these reasons, affiant says that the cost of running local trains as compared with trains doing through business is seventy-five per cent. greater, and that when the usual revenue load of a local freight is taken into consideration that the train expense per ton mile is about 200 per cent. greater for local than through freights.

Affiant says, further, that in his opinion, the operating expenses of a railroad company, including terminal and train expenses, in doing State or local business are, at a minimum, three hundred per cent. greater than the same expense for the same service in doing interstate or through business; and that his opinion is based upon the following state of facts:

The usual conditions affecting interstate as compared with State business are, that the through business is handled in much greater volume and for much longer distances. The expense of handling traffic of railroads is divided into several separate and distinct classes. To determine the cost of each of these classes, as compared with the service rendered, it is necessary to use absolutely separate and distinct units of measure. In handling all freight or passenger traffic between any two terminals the terminal expense and the
.. train expense are absolutely separate and distinct. The unit
292 determining the train expense is the passenger or ton mile.

The only measure which can be applied to the terminal expense, is the actual volume of the traffic, without regard to the distance traveled. For example: A local, passenger taking a train at a local point for a trip of ten miles; when all other things are equal, requires the same cost, as far as the station expense is concerned, as the passenger taking a train to travel a distance of one hundred miles. The usual terminal expense is almost forty per cent. of the total transportation expense, and to carry the illustration a little further on: if it cost a railroad company fifty cents for the terminal expense upon each passenger handled, this cost if applied to a passenger traveling one hundred miles, would show the terminal expense to be at the rate of one-half per cent. per mile, but if applied to a passenger traveling ten miles, it would show the terminal expense to be five cents per mile. The same general rule applies to the movement of freight.

Another factor of great importance, is, that where a station handles a small number of passengers, or a few tons of freight the relative cost per ton or per passenger is almost immeasurably greater than at these terminal points where hundreds of passengers and thousands of tons of freight are handled during the same period.

For all these reasons, and as a result of careful investigation of all the elements of the cost of transportation, both from the standpoint of a railroad accountant and from that of a railroad manager, the affiant has reached the inevitable conclusion that the cost of transporting railroad traffic, both freight and passenger, for short distances is almost immeasurably greater than the relative cost of handling railroad traffic, both freight and passenger, in large vol-

ume for a much greater distance usually traveled by interstate or through freight and passenger traffic. These investigations
293 have conclusively proven that while it is impossible to determine the difference with mathematical precision, the excess of the cost of handling local business is certainly as much as three hundred per cent. greater than the cost of handling through or interstate traffic, with the probability that if there was any known process in accounts by which the matter could be exactly determined that it would show even greater than this. And further the affiant saith not.

RICHARD V. TAYLOR.

Subscribed and sworn to before me by Richard V. Taylor, this 14th day of June, 1907.

[SEAL.] CHARLES E. E. McCARTHY,
Commissioner for the State of North Carolina, in the State of New York.

294 U. S. Circuit Court. Filed Jun. 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN McNEILL ET ALS.

Personally appeared before me L. Green, who, being duly sworn, deposes and says that he is Freight Traffic Manager, Southern Railway Company, complainant in the above stated case.

Deponent says that a rule requiring the construction of joint freight rates over two or more lines in the State of North Carolina by a combination of the locals of each line minus twenty five per cent., will, in numerous cases, result in total rates for a joint movement as low as, or lower than, the rates for continuous carriages over a single line for corresponding distances, whereas, it, as a rule, costs more to handle business over the lines of two carriers than over the line of one.

Deponent says that merely for the purpose of illustration, he has prepared and attached hereto, marked Exhibit No. One, a statement showing instances where combination of local rates of the Seaboard Air Line and Southern Railway on joint traffic for distances stated therein results in a total joint rate as low as, or lower than, the existing mileage scale of the Southern Railway Company or the Seaboard Air Line, or both for corresponding distance over either
295 or both of said lines singly.

Deponent has also attached, for the same purpose, statement marked exhibit No. Two, giving illustrations of the same character with respect to joint rates of the Atlantic Coast line and Southern Railway in the State of North Carolina.

Deponent says that numerous other instances could be given demonstrating the same fact.

Deponent says that, even as to joint rates between those lines, one of which would be compelled to accept seventy five per cent. of its local rate and the other eighty five per cent. of its local rate, the joint rates thus made are in some cases as low or lower than the continuous mileage rate of one of the carriers for the same distance.

Deponent says that the Raleigh & Southport Railway is not now required to apply a charge of anything less than its full local rates on joint traffic, but that under the recent act of the North Carolina Legislature it would be required to accept fifteen per cent. less than its local rates on joint traffic and the Southern Railway twenty five per cent. less than its local.

Deponent says that the local tariff rate of the Raleigh and Southport Railway for a distance of sixty four miles is, on first class forty three cents; on fifty class and class E, twenty cents; sixty class and class B, seventeen cents and on class A fifteen cents. Said rates are no higher than the combined rate of the Raleigh & Southport Railway for a distance of sixty miles after deducting fifteen per cent., and the rate of the Southern Railway for a distance of four miles after deducting twenty five per cent., and with respect to the fourth class rate for said distance the joint rate so made would be lower than the
296 continuous mileage rate of the Raleigh & Southport Railway for sixty four miles.

Deponent says that this is also true as to fourth class rate for combined distance of forty five miles haul by the Southern Railway and Raleigh & Southport Railway, and that numerous other instances of the same character could be cited.

Deponent says that the existing freight rates of the Southern Railway in North Carolina are reasonably low in consideration of the service rendered, the volume of intra-state traffic and by comparison with rates charged in other Southern states for similar service, said rates have been reduced from time to time by the North Carolina Corporation Commission by actual reductions in the entire scale on some portions of the line, by establishing commodity rates and by changes in the classification, and deponent says that, as a whole, the existing freight tariff of the Southern Railway in North Carolina is lower than it has ever heretofore been.

Deponent says that numerous other rates have been voluntarily reduced by the Southern Railway below the scale fixed by the North Carolina Railroad Commission; said reductions having been made to meet commercial conditions and to enable the people of North Carolina to trade freely with each other with respect to such traffic.

Deponent says that such rates as have thus been reduced for commercial reasons cannot be increased to the legal limits without curtailing the movement of the traffic.

L. GREEN, *Deponent.*

Sworn to and subscribed before me on this the 26th day of June, 1907.

J. H. WEAVER,
Notary Public.

297 EXHIBIT No. 1.

Statement of Rates of Seaboard Air Line and Southern Railway in North Carolina, Illustrating where a Combination of Same Less Twenty-five per Cent. Makes the Joint Rates as Low as or Lower than the Continuous Mileage Rates of Either Line for a Distance Corresponding to the Combined Distance Used.

		Miles.	Per hundred pounds.												Per bbl.
			1	2	3	4	5	6	A	B	C	D	E	H	F
1	S. A. L..	15	17	14	11	9	..	....	..	....	..	....	..	..	....
2	Sou. Ry.	5	9	8	6	5	..	....	..	....	..	....	..	..	....
3	Total.	20	26	22	17	14	..	....	..	....	..	....	..	..	....
4	S. A. L..	20	26	22	17	14	..	....	..	....	..	....	..	..	....
1	S. A. L..	25	22	..	14	12	..	....	..	....	..	6	11	..	....
2	Sou. Ry.	5	9	..	6	5	..	....	..	....	..	3	5	..	....
3	Total.	30	31	..	20	17	..	....	..	....	..	9	16	..	....
4	S. A. L..	30	32	..	20	17	..	....	..	....	..	9	18	..	....
5	Sou. Ry.	30	..	..	20	..	..	....	..	....	..	....	16	..	....
1	S. A. L..	40	27	20	19	17	..	10	8	10	..	7	12	15	....
2	Sou. Ry.	5	9	8	6	5	..	4	4	4	..	3	5	5	....
3	Total.	45	36	28	25	22	..	14	12	14	..	10	17	20	....
4	S. A. L..	45	38	30	26	22	..	14	12	14	..	10	17	22	....
5	Sou. Ry.	45	36	28	..	..	..	....	..	....	..	....	..	20	....
1	S. A. L..	60	31	25	21	18	12	12	9	12	..	8	14	17	....
2	Sou. Ry.	5	9	8	6	5	5	4	4	4	..	3	5	5	....
3	Total.	65	40	33	27	23	17	16	13	16	..	11	19	22	....
4	S. A. L..	65	42	34	29	24	17	17	13	17	..	11	19	23	....
5	Sou. Ry.	65	42	..	28	..	17	....	..	....	..	....	..	..	....
1	S. A. L..	75	34	28	23	18	..	14	..	13	9	9	15	18	18
2	Sou. Ry.	5	9	8	6	5	..	4	..	4	4	3	5	5	7.5
3	Total.	80	43	36	29	23	..	18	..	17	13	12	20	23	25.5
4	S. A. L..	80	45	39	31	25	..	18	..	18	13	12	20	24	26
5	Sou. Ry.	80	44	..	30	..	..	....	..	....	13	....	..	..	26
1	S. A. L..	90	35	31	26	20	14	14	..	14	..	10	16	20	....
2	Sou. Ry.	5	9	8	6	5	5	4	..	4	..	3	5	5	....
3	Total.	95	44	39	32	25	19	18	..	18	..	13	21	25	....
4	S. A. L..	95	48	41	34	26	20	19	..	18	..	13	21	26	....
5	Sou. Ry.	95	48	..	32	..	20	....	..	....	..	....	..	..	....
1	S. A. L..	100	38	32	26	20	15	15	..	14	..	10	17	20	....
2	Sou. Ry.	5	9	8	6	5	5	4	..	4	..	3	5	5	....
3	Total.	105	47	40	32	25	20	19	..	18	..	13	22	25	....
4	S. A. L..	105	50	42	35	27	20	20	..	18.5	..	13.5	22	27	....
5	Sou. Ry.	105	50	40	33	25	20	....	..	....	..	....	..	25	....
1	S. A. L..	125	41	33	27	21	16	15	11	14	12	10	17	20	24
2	Sou. Ry.	5	9	8	6	5	5	4	4	4	4	3	5	5	7.5
3	Total.	130	50	41	33	26	21	19	15	18	14	13	22	25	31.5
4	S. A. L..	130	54	44	36	28	21	20.5	15	18	16	13.5	23	27	32
5	Sou. Ry.	130	54	44	34	26	21	....	15	18	16	13	..	26	32

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
S. A. L....	150	44	36	28	22	17	16	12	14	13	10.5	18	22	25.5
Sou. Ry...	5	9	8	6	5	5	4	4	4	4	3	5	5	7.5
Total. ...		53	44	34	27	22	20	16	18	17	13.5	23	27	33
S. A. L....	155	50	40	30	30	24	21	16.5	20	17	15	25	29	34
Sou. Ry...	155	50	40	30	29	24	..	16.5	20	17	15	24	29	34
S. A. L....	175	46	38	32	24	21	16	13	16	13.5	12	21	24	27
Sou. Ry...	5	9	8	6	5	5	4	4	4	4	3	5	5	7.5
Total.	180	55	46	38	29	26	20	17	20	17.5	15	26	29	34.5
S. A. L....	180	61	51	42	32	28	21	17	21	18	15.5	28	32	36
Sou. Ry...	180	61	51	42	32	28	21	17	21	18	15.5	28	32	36
S. A. L....	200	47	40	33	26	23	17	13	17	14.5	12	23	26	28.5
Sou. Ry...	5	9	8	6	5	5	4	4	4	4	3	5	5	7.5
Total. ...		56	48	39	31	28	21	17	21	18.5	15	28	31	36
S. A. L....	205	63	53	44	34	30	23	17.5	22	20	17	30	34	40
Sou. Ry...	205	63	53	44	34	30	23	17.5	22	20	16	30	34	40
S. A. L....	5	..	8	7	..	..	..	....	..	....	....	..	..	....
Sou. Ry...	10	..	10	8	..	..	..	....	..	....	....	..	..	....
Total. ...		..	18	15	..	..	..	....	..	....	....	..	..	....
S. A. L....	15	..	18	15	..	..	..	....	..	....	....	..	..	....
Sou. Ry...	...	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	10	..	11	9	..	..	..	....	..	....	....	..	..	....
Sou. Ry...	10	..	10	8	..	..	..	....	..	....	....	..	..	....
Total. ...		..	21	17	..	..	..	....	..	....	....	..	..	....
S. A. L....	20	..	22	17	..	..	..	....	..	....	....	..	..	....
Sou. Ry...	20	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	15	..	14	11	9	..	..	....	..	....	....	..	7	8
Sou. Ry...	10	..	10	8	7	..	..	....	..	....	....	..	6	7
Total. ...		..	24	19	16	..	..	....	..	....	....	..	13	15
S. A. L....	25	..	24	19	46	..	..	....	..	....	....	..	13	15
Sou. Ry...	25	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	25	..	..	14	12	..	8	....	..	....	....	..	..	11
Sou. Ry...	10	..	..	8	7	..	5	....	..	....	....	..	..	7
Total. ...		..	..	22	19	..	13	....	..	....	....	..	..	18
S. A. L....	35	..	..	21	20	..	13	....	..	....	....	..	..	18
Sou. Ry...	35	..	..	22	..	..	..	....	..	....	....	..	..	18
S. A. L....	40	..	20	19	..	..	10	....	..	10	....	12	15	....
Sou. Ry...	10	..	10	8	..	..	5	....	..	5	....	6	7	....
Total. ...		..	30	27	..	..	15	....	..	15	....	18	22	....
S. A. L....	50	..	32	27	..	..	15	....	..	15	....	18	22	....
Sou. Ry...	50	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	60	..	25	21	..	..	12	....	..	12	....	14	..	....
Sou. Ry...	10	..	10	8	..	..	5	....	..	5	....	6	..	....
Total. ...		..	35	29	..	..	17	....	..	17	....	20	..	....
S. A. L....	70	..	35	29	..	..	17	....	..	17	....	20	..	....
Sou. Ry...	70	..	..	..	..	..	..	....	..	....	....	..	..	....

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
S. A. L....	75	..	28	23	18	..	..	....	13	....	....	15	..	....
Sou. Ry...	10	..	10	8	7	..	..	....	5	....	....	6	..	....
Total. ...		38	31	25	..	..	..	....	18	....	....	21	..	....
S. A. L....	85	..	40	33	25	..	..	....	18	....	....	21	..	....
Sou. Ry...	85	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	90	..	31	26	..	14	14	....	..	....	....	..	..	....
Sou. Ry...	10	..	10	8	..	6	5	....	..	....	....	..	..	....
Total. ...		..	41	34	..	20	19	....	..	....	....	..	..	....
S. A. L....	100	..	42	35	..	20	19	....	..	....	....	..	..	....
Sou. Ry...	100	..	..	..	..	20	..	....	..	....	....	..	..	....
S. A. L....	100	..	32	26	20	..	15	....	..	....	....	..	20	....
Sou. Ry...	10	..	10	8	7	..	5	....	..	....	....	..	7	....
Total. ...		..	42	34	27	..	20	....	..	....	....	..	27	....
S. A. L....	110	..	42	35	27	..	20	....	..	....	....	..	27	....
Sou. Ry...	110	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	125	41	35	27	21	16	15	11	14	....	10	17	20	....
Sou. Ry...	10	14	10	8	7	6	5	5	5	....	4	6	7	....
Total. ...		55	43	35	28	22	20	16	19	....	14	23	27	....
S. A. L....	135	56	46	36	28	22	21	16	19	....	14	24	28	....
Sou. Ry...	135	56	46	36	..	22	..	....	19	....	14	..	..	....
S. A. L....	150	44	36	28	22	17	16	....	14	....	10.5	18	22	....
Sou. Ry...	10	14	10	8	7	6	5	....	5	....	4	6	7	....
Total. ...		58	46	36	29	23	21	....	19	....	14.5	24	29	....
S. A. L....	160	59	49	39	30	24	21	....	20	....	15	25	29	....
Sou. Ry...	160	59	49	39	29	24	..	....	20	....	15	24	29	....
S. A. L....	175	46	38	32	24	21	16	....	16	13.5	....	21	24	27
Sou. Ry...	10	14	10	8	7	6	5	....	5	4.5	....	6	7	9
Total. ...		60	48	40	31	27	21	....	21	18	....	27	31	36
S. A. L....	185	62	52	43	33	29	22	....	21	19	....	29	33	38
Sou. Ry...	185	62	52	43	33	29	22	....	21	19	....	29	33	38
S. A. L....	200	47	40	33	26	23	17	....	17	14.5	12	23	26	28.5
Sou. Ry...	10	14	10	8	7	6	5	....	5	4.5	4	6	7	9
Total. ...		61	51	41	33	29	22	....	22	19	16	29	33	37.5
S. A. L....	210	63	53	44	34	30	23	....	22	20	17	30	34	40
Sou. Ry...	210	63	53	44	34	30	23	....	22	20	16	30	34	40
S. A. L....	5	9	8	..	6	..	..	....	..	....	....	..	..	....
Sou. Ry...	15	16	12	..	8	..	..	....	..	....	....	..	..	....
Total. ...		25	20	..	14	..	..	....	..	....	....	..	..	....
S. A. L....	20	26	22	..	14	..	..	....	..	....	....	..	..	....
Sou. Ry...	20	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	10	..	11	..	8	..	..	....	5	....	....	..	7	....
Sou. Ry...	15	..	12	..	8	..	..	....	5	....	....	..	8	....
Total. ...		..	23	..	16	..	..	....	10	....	....	..	15	....
S. A. L....	25	..	24	..	16	..	..	....	10	....	....	..	15	....
Sou. Ry...	25	..	..	..	..	..	..	....	..	....	....	..	..	....

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
S. A. L....	15	..	..	..	9	..	..	....	6	....	....	7	8	....
Sou. Ry...	15	..	..	..	8	..	..	....	5	....	....	7	8	....
Total. ...		..	..	..	17	..	..	....	11	....	....	14	16	....
S. A. L....	30	..	..	..	18	..	..	....	11	....	....	14	18	....
Sou. Ry....	30	..	..	..	..	..	..	....	..	....	....	..	16	....
S. A. L....	25	..	..	14	12	..	..	....	8	....	....	..	11	....
Sou. Ry...	15	..	..	11	8	..	..	....	5	....	....	..	8	....
Total. ...		..	..	25	20	..	..	....	13	....	....	..	19	....
S. A. L....	40	..	..	25	22	..	..	....	13	....	....	..	20	....
Sou. Ry...	40	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	40	..	20	..	..	..	10	....	10	....	....	..	15	....
Sou. Ry...	15	..	12	..	..	..	6	....	5	....	....	..	8	....
Total. ...		..	32	..	..	..	16	....	15	....	....	..	23	....
S. A. L....	55	..	32	..	..	..	16	....	16	....	....	..	23	....
Sou. Ry...	55	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	60	..	25	..	..	..	12	....	12	....	....	..	..	....
Sou. Ry...	15	..	12	..	..	..	6	....	5	....	....	..	..	....
Total. ...		..	37	..	..	..	18	....	17	....	....	..	..	....
S. A. L....	75	..	37	..	..	..	18	....	17	....	....	..	..	....
Sou. Ry...	75	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	75	..	28	23	18	..	..	....	13	....	....	..	18	....
Sou. Ry...	15	..	12	11	8	..	..	....	5	....	....	..	8	....
Total. ...		..	40	34	26	..	..	....	18	....	....	..	26	....
S. A. L....	90	..	41	34	26	..	..	....	18	....	....	..	26	....
Sou. Ry...	...	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	125	..	33	..	..	..	15	11	14	....	....	17	20	....
Sou. Ry...	15	..	12	..	..	..	6	5	5	....	....	7	8	....
Total. ...		..	45	..	..	..	21	16	19	....	....	24	28	....
S. A. L....	140	..	46	..	..	..	21	16	19	....	....	24	28	....
Sou. Ry...	140	..	46	..	..	..	..	16	19	....	....	..	..	....
S. A. L....	150	44	36	28	22	17	..	12	14	....	10.5	18	22	25.5
Sou. Ry...	15	16	12	11	8	7	..	5	5	....	4.5	7	8	10.5
Total. ...		60	48	39	30	24	..	17	19	....	15	25	30	36
S. A. L....	165	60	50	41	31	23	..	17	20	....	15	26	31	36
Sou. Ry...	165	..	49	39	..	24	..	....	20	....	15	..	..	....
S. A. L....	175	46	38	32	24	21	16	....	16	13.5	....	21	24	27
Southern..	15	16	12	11	8	7	6	....	5	5.5	....	7	8	10.5
Total. ...		62	50	43	32	28	22	....	21	19	....	28	32	37.5
S. A. L....	190	62	52	43	33	29	22	....	21	19	....	29	33	38
Sou. Ry...	190	62	52	43	33	29	22	....	21	19	....	29	33	38
S. A. L....	200	47	40	33	26	23	17	13	17	14.5	12	23	26	28.5
Sou. Ry...	15	16	12	11	8	7	6	5	5	5.5	4.5	7	8	10.5
Total. ...		63	52	44	34	30	23	18	22	20	16.5	30	34	39
S. A. L....	215	64	54	45	35	31	24	18	23	20	17	31	35	40
Sou. Ry...	215	64	54	45	35	31	24	18	23	20	17	31	35	40

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
S. A. L....	5	9	8	7	6	..	5	....	..	....	....	5	5	....
Sou. Ry...	20	18	14	12	10	..	6	....	..	....	....	8	9	....
Total. ...		27	22	19	16	..	11	....	..	....	....	13	14	....
S. A. L....	25	29	24	19	16	..	11	....	..	....	....	13	15	....
Sou. Ry...	25	27	..	..	..	..	..	....	..	....	....	..	**14**	....
S. A. L....	10	14	11	..	8	..	..	5	5	....	....	..	7	....
Sou. Ry...	20	18	14	..	10	..	..	5	6	....	....	..	**9**	....
Total. ...		32	25	..	18	..	..	10	11	....	....	..	16	....
S. A. L....	30	32	25	..	18	..	..	10	11	....	....	..	18	....
Sou. Ry...	30	..	..	..	..	..	..	....	..	....	....	..	16	....
S. A. L....	15	..	..	..	9	..	7	6	6	....	....	7	8	....
Sou. Ry...	20	..	..	..	10	..	6	5	6	....	....	**8**	**9**	....
Total. ...		..	..	..	19	..	13	11	12	....	....	15	17	....
S. A. L....	35	..	..	..	20	..	13	11	12	....	....	15	18	....
Sou. Ry...	35	..	..	..	..	..	..	....	..	....	....	..	**18**	....
S. A. L....	25	..	..	14	12	..	8	7	8	....	....	..	11	....
Sou. Ry...	20	..	..	12	10	..	6	5	6	....	....	..	9	....
Total.		..	..	26	22	..	14	12	14	....	....	..	20	....
S. A. L....	45	..	..	26	22	..	14	12	14	....	....	..	22	....
Sou. Ry...	45	..	..	..	..	..	..	....	..	....	....	..	20	....
S. A. L....	50	..	25	..	..	..	12	....	12	....	....	..	..	....
Sou. Ry...	20	..	14	..	..	..	6	....	6	....	....	..	..	....
Total. ...		..	39	..	..	..	18	....	18	....	....	..	..	....
S. A. L....	80	..	39	..	..	..	18	....	18	....	....	..	..	....
Sou. Ry...	80	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	125	..	33	..	..	..	15	11	..	....	....	..	20	....
Sou. Ry...	20	..	14	..	..	..	6	5	..	....	....	..	9	....
Total. ...		..	47	..	..	..	21	16	..	....	....	..	29	....
S. A. L....	145	..	48	..	..	..	21	16.5	..	....	....	..	29	....
Sou. Ry...	145	..	48	..	..	..	..	16.5	..	....	....	..	..	....
S. A. L....	150	..	36	28	..	17	..	12	14	....	....	18	22	....
Sou. Ry...	20	..	14	12	..	8	..	5	6	....	....	8	9	....
Total. ...		..	50	40	..	25	..	17	20	....	....	26	31	....
S. A. L....	170	..	50	41	..	26	..	17	20	....	....	26	31	....
Sou. Ry...	170	..	50	41	..	26	..	17	20	....	....	26	31	....
S. A. L....	175	..	38	32	24	21	16	....	16	....	....	21	24	....
Sou. Ry...	20	..	14	12	10	8	6	....	6	....	....	8	9	....
Total. ...		..	52	44	34	29	22	....	22	....	....	29	33	....
S. A. L....	195	..	53	44	34	30	23	....	22	....	....	30	34	....
Sou. Ry...	195	..	53	44	34	30	23	....	22	....	....	30	34	....
S. A. L....	200	..	40	33	..	23	17	13	17	....	....	23	26	....
Sou. Ry...	20	..	14	12	..	8	6	5	6	....	....	8	9	....
Total. ...		..	54	45	..	31	23	18	23	....	....	31	35	....
S. A. L....	220	..	54	45	..	31	24	18	23	....	....	31	35	....
Sou. Ry...	220	..	54	45	..	31	24	18	23	....	....	31	35	....

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
S. A. L....	5	9	8	..	6	..	..	....	..	....	....	5	5	....
Sou. Ry...	25	20	15	..	11	..	..	....	..	....	....	9	11	....
Total. ...		29	23	..	17	..	..	....	..	....	....	14	16	....
S. A. L....	30	32	25	..	18	..	..	....	..	....	....	14	18	....
Sou. Ry...	30	30	24	..	..	..	..	....	..	....	....	..	16	....
S. A. L....	10	14	11	..	8	..	6	5	5	....	....	..	7	....
Sou. Ry...	25	20	15	..	11	..	7	6	7	....	....	..	11	....
Total. ...		34	26	..	19	..	13	11	12	....	....	..	18	....
S. A. L....	35	34	26	..	20	..	13	11	12	....	....	..	18	....
Sou. Ry...	35	..	..	..	..	..	....	..	....	....	..	..	18	....
S. A. L....	15	..	..	11	9	..	..	....	6	....	....	7	8	....
Sou. Ry...	25	..	..	14	11	..	..	....	7	....	....	9	11	....
Total. ...		..	..	25	20	..	..	....	13	....	....	16	19	....
S. A. L....	40	..	..	25	22	..	..	....	13	....	....	16	20	....
Sou. Ry...	40	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	25	..	..	..	12	..	8	....	8	....	....	..	11	....
Sou. Ry...	25	..	..	..	11	..	7	....	7	....	....	..	11	....
Total. ...		..	..	..	23	..	15	....	15	....	....	..	22	....
S. A. L....	50	..	..	..	23	..	15	....	15	....	....	..	22	....
Sou. Ry...	50	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	125	..	33	..	..	..	..	11	..	....	....	..	..	....
Sou. Ry...	25	..	15	..	..	..	..	6	..	....	....	..	..	....
Total. ...		..	48	..	..	..	..	17	..	....	....	..	..	....
S. A. L....	150	..	48	..	..	..	..	16.5	..	....	....	..	..	....
Sou. Ry...	150	..	48	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	150	..	36	28	..	17	..	....	14	....	....	18	..	....
Sou. Ry...	25	..	15	14	..	9	..	....	7	....	....	9	..	....
Total. ...		..	51	42	..	26	..	....	21	....	....	27	..	....
S. A. L....	175	..	51	42	..	28	..	....	21	....	....	28	..	....
Sou. Ry...	175	..	51	42	..	28	..	....	21	....	....	28	..	....
S. A. L....	175	..	38	..	..	21	16	....	..	....	....	21	..	....
Sou. Ry...	25	..	15	..	..	9	7	....	..	....	....	9	..	....
Total. ...		..	53	..	..	30	23	....	..	....	....	30	..	....
S. A. L....	200	..	53	..	..	30	23	....	..	....	....	30	..	....
Sou. Ry...	200	..	53	..	..	30	23	....	..	....	....	30	..	....
S. A. L....	200	..	..	..	..	..	17	....	..	....	12	..	..	28.5
Sou. Ry...	25	..	..	..	..	..	7	....	..	....	6	..	..	13.5
Total. ...		..	..	..	..	..	24	....	..	....	18	..	..	42
S. A. L....	225	..	..	..	..	..	24	....	..	....	18	..	..	42
Sou. Ry...	225	..	..	..	..	..	24	....	..	....	....	..	..	42
S. A. L....	5	9	8	7	6	..	5	5	..	....	....	5	5	....
Sou. Ry...	30	23	18	15	12	..	8	6	..	....	....	10	12	....
Total. ...		32	26	22	18	..	13	11	..	....	....	15	17	....
S. A. L....	35	34	26	21	20	..	13	11	..	....	....	15	18	....
Sou. Ry...	35	33	26	22	18	..	..	....	..	....	....	..	18	....

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
S. A. L....	10	..	..	9	8	..	..	5	5	....	....	..	..	7
Sou. Ry...	30	..	..	15	12	..	..	6	8	....	....	..	..	12
Total. ...		..	..	24	20	..	..	11	13	....	....	..	..	19
S. A. L....	40	..	..	25	22	..	..	11	13	....	....	..	..	20
Sou. Ry...	40	..	..	22	..	..	..	....	..	....	....	..	..	....
S. A. L....	15	..	..	11	9	..	..	6	6	....	....	..	7	8
Sou. Ry...	30	..	..	15	12	..	..	6	8	....	....	..	10	12
Total. ...		..	..	26	21	..	..	12	14	....	....	..	17	20
S. A. L....	45	..	..	26	22	..	..	12	14	....	....	..	17	22
Sou. Ry...	45	..	..	..	..	..	..	....	..	....	....	..	..	20
S. A. L....	25	..	..	..	..	..	8	....	8	....	....	..	..	11
Sou. Ry...	30	..	..	..	..	..	8	....	8	....	....	..	..	12
Total. ...		..	..	..	..	..	16	....	16	....	....	..	..	23
S. A. L....	55	..	..	..	..	..	16	....	16	....	....	..	..	23
Sou. Ry...	55	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	5	9	..	7	6	..	5	....	5	....	....	..	5	5
Sou. Ry...	35	25	..	17	14	..	8	....	8	....	....	..	11	14
Total. ...		34	..	24	20	..	13	....	13	....	....	..	16	19
S. A. L....	40	36	..	25	22	..	13	....	13	....	....	..	16	20
Sou. Ry...	40	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	10	..	..	9	8	..	6	5	5	....	....	..	..	7
Sou. Ry...	35	..	..	17	14	..	8	7	8	....	....	..	..	14
Total. ...		..	..	26	22	..	14	12	13	....	....	..	..	21
S. A. L....	45	..	..	26	22	..	14	12	14	....	....	..	..	22
Sou. Ry...	45	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	15	..	..	..	9	..	7	....	6	....	....	..	7	8
Sou. Ry...	35	..	..	..	14	..	8	....	8	....	....	..	11	14
Total. ...		..	..	..	23	..	15	....	14	....	....	..	18	22
S. A. L....	50	..	..	..	23	..	15	....	15	....	....	..	18	22
Sou. Ry...	50	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	25	..	..	..	..	..	8	....	8	....	....	..	..	....
Sou. Ry...	35	..	..	..	..	..	8	....	8	....	....	..	..	....
Total. ...		..	..	..	..	..	16	....	16	....	....	..	..	....
S. A. L....	60	..	..	..	..	..	16	....	16	....	....	..	..	....
Sou. Ry...	60	..	..	..	..	..	..	....	..	....	....	..	..	....
S. A. L....	150	..	..	..	..	17	..	....	..	....	....	..	18	....
Sou. Ry...	35	..	..	..	..	11	..	....	..	....	....	..	11	....
Total. ...		..	..	..	..	28	..	....	..	....	....	..	29	....
S. A. L....	185	..	..	..	..	29	..	....	..	....	....	..	29	....
Sou. Ry...	185	..	..	..	..	29	..	....	..	....	....	..	29	....

Key.

First line of figures, S. A. L. locals less 25%.
Second line of figures, Southern Ry. locals less 25%.
Third line of figures, a combination of first and second lines.
Fourth line of figures, S. A. L. local for continuous distance.
Fifth line of figures, Southern Ry. local for continuous distance.

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EXHIBIT No. 2.

Statement of Rates of Atlantic Coast Line and Southern Railway in North Carolina, Illustrating where a Combination of Same Less Twenty-five per Cent. Makes the Joint Rates as Low as or Lower than the Continuous Mileage Rates of Either Line for a Distance Corresponding to the Combined Distance Used.

	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
1 A. C. L.	5	9	..	..	..	..	..	....	..	....	....	..	..	....
2 So. Ry..	5	9	..	..	..	..	..	....	..	....	....	..	..	....
3 Total.	10	18	..	..	..	..	..	....	..	....	....	..	..	....
4 A. C. L.	10	18	..	..	..	..	..	....	..	....	....	..	..	....
5 So. Ry..	10	18	..	..	..	..	..	....	..	....	....	..	..	....
1 A. C. L.	10	..	..	8	..	..	5	....	..	....	....	..	..	....
2 So. Ry..	5	..	..	6	..	..	4	....	..	....	....	..	..	....
3 Total.	15	..	..	14	..	..	9	....	..	....	....	..	..	....
4 A. C. L.	15	..	..	14	..	..	9	....	..	....	....	..	..	....
5 So. Ry..	15	..	..	14	..	..	..	....	..	....	....	..	..	....
1 A. C. L.	15	..	..	..	8	..	..	....	..	....	....	..	8	....
2 So. Ry..	5	..	..	..	5	..	..	....	..	....	....	..	5	....
3 Total.	20	..	..	..	13	..	..	....	..	....	....	..	13	....
4 A. C. L.	20	..	..	..	13	..	..	....	..	....	....	..	13	....
5 So. Ry..	20	..	..	..	13	..	..	....	..	....	....	..	..	....
1 A. C. L.	20	18	..	12	10	8	..	....	..	....	....	8	10	....
2 So. Ry..	5	9	..	6	5	5	..	....	..	....	....	5	5	....
3 Total.	25	27	..	18	15	13	..	....	..	....	....	13	15	....
4 A. C. L.	25	27	..	18	15	13	..	....	..	....	....	13	15	....
5 So. Ry..	25	27	..	18	00	00	..	....	..	....	....	..	..	....
1 A. C. L.	25	20	15	14	11	..	..	....	..	....	....	..	11	....
2 So. Ry..	5	9	8	6	5	..	..	....	..	....	....	..	5	....
3 Total.	30	29	23	20	16	..	..	....	..	....	....	..	16	....
4 A. C. L.	30	30	24	20	18	..	..	....	..	....	....	..	18	....
5 So. Ry..	30	30	24	20	16	..	..	....	..	....	....	..	16	....
1 A. C. L.	30	23	18	15	14	..	8	....	8	....	6	..	14	....
2 So. Ry..	5	9	8	6	5	..	4	....	4	....	3	..	5	....
3 Total.	35	32	26	21	19	..	12	....	12	....	9	..	19	....
4 A. C. L.	35	33	26	22	20	..	12	....	12	....	9	..	19	....
5 So. Ry..	35	33	26	22	..	..	..	....	..	....	9	..	..	....
1 A. C. L.	40	25	20	17	15	11	9	....	9	....	....	11	15	....
2 So. Ry..	5	9	8	6	5	5	4	....	4	....	....	5	5	....
3 Total.	45	34	28	23	20	16	13	....	13	....	....	16	20	....
4 A. C. L.	45	36	28	24	22	17	13	....	13	....	....	17	22	....
5 So. Ry..	45	36	28	24	20	..	..	....	..	....	....	..	20	....
1 A. C. L.	45	27	..	18	17	..	..	....	..	....	....	..	17	....
2 So. Ry..	5	9	..	6	5	..	..	....	..	....	....	..	5	....
3 Total.	50	36	..	24	22	..	..	....	..	....	....	..	22	....
4 A. C. L.	50	36	..	24	22	..	..	....	..	....	....	..	22	....
5 So. Ry..	50	36	..	24	..	..	..	....	..	....	....	..	..	....

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
A. C. L..	50	27	21	18	17	13	10	8	10	....	7	13	17	....
Sou. Ry.	5	9	8	6	5	5	4	4	4	....	3	5	5	....
Total. ...		36	29	24	22	18	14	12	14	....	10	18	22	....
A. C. L..	55	39	30	26	23	18	14	12	14	....	10	18	23	....
Sou. Ry.	55	39	30	26	..	..	..	....	....	....	10	..	..	....
A. C. L..	55	29	..	20	17	..	..	....	....	....	....	..	17	....
Sou. Ry.	5	9	..	6	5	..	..	....	....	....	....	..	5	....
Total. ...		38	..	26	22	..	..	....	....	....	....	..	22	....
A. C. L..	60	39	..	26	23	..	..	....	....	....	....	..	23	....
Sou. Ry.	60	39	..	26	..	..	..	....	....	....	....	..	21	....
A. C. L..	60	29	23	20	17	14	11	9	11	....	....	14	17	....
Sou. Ry.	5	9	8	6	5	5	4	4	4	....	....	5	5	....
Total. ...		38	31	26	22	19	15	13	15	....	....	19	22	....
A. C. L..	65	42	32	28	23	19	15	13	15	....	....	19	23	....
Sou. Ry.	65	42	32	28	..	..	..	....	....	....	....	..	..	....
A. C. L..	65	32	24	21	17	14	11	....	11	....	....	14	17	....
Sou. Ry.	5	9	8	6	5	5	4	....	4	....	....	5	5	....
Total. ...		41	32	27	22	19	15	....	15	....	....	19	22	....
A. C. L..	70	42	32	28	23	19	15	....	15	....	....	19	23	....
Sou. Ry.	70	42	32	28	..	..	..	....	....	....	....	..	..	....
A. C. L..	70	32	24	21	17	14	11	....	11	....	....	14	17	....
Sou. Ry.	5	9	8	6	5	5	4	....	4	....	....	5	5	....
Total. ...		41	32	27	22	19	15	....	15	....	....	19	22	....
A. C. L..	75	44	34	30	24	20	17	....	15	....	....	20	24	....
Sou. Ry.	75	44	34	30	22	..	15	....	15	....	....	..	22	....
A. C. L..	75	33	26	23	18	15	13	....	11	9	7.5	15	18	18
Sou. Ry.	5	9	8	6	5	5	4	....	4	4	3	5	5	7.5
Total. ...		42	34	29	23	20	17	....	15	13	10.5	20	23	25.5
A. C. L..	80	44	34	30	24	20	17	....	15	13	11	20	24	26
Sou. Ry.	80	44	34	30	..	..	..	....	15	13	11	..	..	26
A. C. L..	80	33	26	23	18	15	13	....	11	....	8	15	18	....
Sou. Ry.	5	9	8	6	5	5	4	....	4	....	3	5	5	....
Total. ...		42	34	29	23	20	17	....	15	....	11	20	23	....
A. C. L..	85	45	36	31	24	21	17	....	15.5	....	11	21	24	....
Sou. Ry.	85	46	36	31	..	..	..	....	16	....	11	..	..	....
A. C. L..	85	34	27	23	18	16	13	....	12	....	....	16	18	19.5
Sou. Ry.	5	9	8	6	5	5	4	....	4	....	....	5	5	7.5
Total. ...		43	35	29	23	21	17	....	16	....	....	21	23	27
A. C. L..	90	46	36	31	24	21	17	....	15.5	....	....	21	24	27
Sou. Ry.	90	46	36	31	..	..	..	....	16	....	....	..	..	27
A. C. L..	90	35	27	23	18	16	13	10	12	10	8.5	16	18	20.5
Sou. Ry.	5	9	8	6	5	5	4	4	4	4	3	5	5	7.5
Total. ...		44	35	29	23	21	17	14	16	14	11.5	21	23	27.5
A. C. L..	95	47	38	32	26	22	18	13.5	15.5	14	11.5	22	26	28
Sou. Ry.	95	48	38	32	24	..	..	14	16	....	....	..	24	....

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
A. C. L..	95	35	29	24	20	17	14	10	12	....	8.5	17	20	....
So. Ry..	5	9	8	6	5	5	4	4	4	....	3	5	5	....
Total. ...		44	37	30	25	22	18	14	16	....	11.5	22	25	....
A. C. L..	100	47	38	32	26	22	18	13.5	16.5	11.5	....	22	26	....
Sou. Ry.	100	48	38	32	..	..	..	14	17	....	12	..	..	....
A. C. L..	100	35	29	24	20	17	14	10	12	....	8.5	17	20	....
Sou. Ry.	5	9	8	6	5	5	4	4	4	....	3	5	5	....
Total. ...		44	37	30	25	22	18	14	16	....	11.5	22	25	....
A. C. L..	105	50	40	33	27	22	18	14	16	....	12	22	27	....
Sou. Ry.	105	50	40	33	25	..	..	14	17	....	12	..	25	....
A. C. L..	110	38	30	25	20	17	14	11	12	10.5	9	17	20	21
Sou. Ry.	5	9	8	6	5	5	4	4	4	4	3	5	5	7.5
Total. ...		47	38	[31	25	22	18]*	15	16	14.5	12	22	25	28.5
A. C. L..	115	50	42	34	27	23	19	14	16	15	12	23	27	30
Sou. Ry.	115	52	42	34	25	..	..	15	18	15	13	..	25	30
A. C. L..	125	39	33	26	21	17	14	11	13	12	10	17	21	24
Sou. Ry.	5	9	8	6	5	5	4	4	4	4	3	5	5	7.5
Total. ..		48	41	32	26	22	18	15	17	16	13	22	26	31.5
A. C. L..	130	52	44	35	28	23	19	15	17	16	13	23	28	32
Sou. Ry.	130	54	44	34	26	..	..	15	18	16	13	..	26	32
A. C. L..	150	41	35	28	22	18	15	12	14	13	10.5	18	22	25.5
Sou. Ry.	5	9	8	6	5	5	4	4	4	4	3	5	5	7.5
Total. ...		50	43	34	27	23	19	16	18	17	13.5	13	27	33
A. C. L..	155	54	47	39	29	25	20	15.5	18	17	14	25	29	34
Sou. Ry.	155	59	49	39	29	29	19	16.5	20	17	15	26	29	34
A. C. L..	15	..	..	..	8	7	..	....	....	....	....	7	8	....
Sou. Ry.	10	..	..	..	7	6	..	....	....	....	....	6	7	....
Total. ...		..	..	..	15	13	..	....	....	....	....	13	15	....
A. C. L..	25	..	..	..	15	13	..	....	....	....	....	13	15	....
Sou. Ry.	25	..	..	..	..	..	..	....	....	....	....	..	..	....
A. C. L..	20	..	14	12	10	8	..	....	....	....	....	8	10	....
Sou. Ry.	10	..	10	8	7	6	..	....	....	....	....	6	7	....
Total. ...		..	24	20	17	14	..	....	....	....	....	14	17	....
A. C. L..	30	..	24	20	18	14	..	....	....	....	....	14	18	....
Sou. Ry.	30	..	24	28	..	..	..	....	....	....	....	..	..	....
A. C. L..	25	..	15	14	11	..	..	....	....	....	....	..	11	....
Sou. Ry.	10	..	10	8	7	..	..	....	....	....	....	..	7	....
Total. ...		..	25	22	18	..	..	....	....	....	....	..	18	....
A. C. L..	35	..	26	22	20	..	..	....	....	....	....	..	20	....
Sou. Ry.	35	..	26	22	18	..	..	....	....	....	....	..	18	....
A. C. L..	35	..	..	..	15	11	..	....	....	....	....	11	..	....
Sou. Ry.	10	..	..	..	7	6	..	....	....	....	....	6	..	....
Total. ...		..	..	..	22	17	..	....	....	....	....	17	..	....
A. C. L..	45	..	..	..	22	17	..	....	....	....	....	17	..	....
Sou. Ry.	45	..	..	..	..	..	..	....	....	....	....	..	..	....

[* Figures enclosed in brackets erased in copy.]

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F	
A. C. L....	40	..	..	..	15	11	..	....	..	....	....		11	15	....
Sou. Ry...	10	..	..	..	7	6	..	....	..	....	....		6	7	....
Total. ...		..	..	..	22	17	..	....	..	....	....		17	22	....
A. C. L....	50	..	..	..	22	17	..	....	..	....	....		17	22	....
Sou. Ry...	50	..	..	..	..	..	..	....	..	....	....		..	..	....
A. C. L....	65	..	24	21	17	14	11	....	..	....	....		14	17	....
Sou. Ry...	10	..	10	8	7	6	5	....	..	....	....		6	7	....
Total. ...		..	34	29	24	20	16	....	..	....	....		20	24	....
A. C. L....	75	..	34	30	24	20	17	....	..	....	....		20	24	....
Sou. Ry...	75	..	34	30	..	..	..	....	..	....	....		..	..	....
A. C. L....	70	..	24	21	17	14	11	....	..	....	....		14	17	....
Sou. Ry...	10	..	10	8	7	6	5	....	..	....	....		6	7	....
Total. ...		..	34	29	24	20	16	....	..	....	....		20	24	....
A. C. L....	80	..	34	30	24	20	17	....	..	....	....		20	24	....
Sou. Ry...	80	..	34	30	..	..	..	....	..	....	....		..	..	....
A. C. L....	5	..	..	..	5	..	..	....	4	....	....		..	5	....
Sou. Ry...	15	..	..	..	8	..	..	....	5	....	....		..	8	....
Total. ...		..	..	..	13	..	..	....	9	....	....		..	13	....
A. C. L....	20	..	..	..	13	..	..	....	9	....	....		..	13	....
Sou. Ry...	20	..	..	..	13	..	..	....	..	....	....		..	..	....
A. C. L....	10	..	..	..	7	6	..	....	5	....	....		6	7	....
Sou. Ry...	15	..	..	..	8	7	..	....	5	....	....		7	8	....
Total. ...		..	..	..	15	13	..	....	10	....	....		13	15	....
A. C. L....	25	..	..	..	15	13	..	....	10	....	....		13	15	....
Sou. Ry...	25	..	..	..	..	..	..	....	..	....	....		..	..	....
A. C. L....	15	..	12	..	8	7	..	....	6	....	....		7	8	....
Sou. Ry...	15	..	12	..	8	7	..	....	5	....	....		7	8	....
Total. ...		..	24	..	16	14	..	....	11	....	....		14	16	....
A. C. L....	30	..	24	..	18	14	..	....	11	....	....		14	18	....
Sou. Ry...	30	..	24	..	16	13	..	....	..	....	....		..	16	....
A. C. L....	20	..	14	..	10	..	..	....	7	....	....		8	10	....
Sou. Ry...	15	..	12	..	8	..	..	....	5	....	....		7	8	....
Total. ...		..	26	..	18	..	..	....	12	....	....		15	18	....
A. C. L....	35	..	26	..	20	..	..	....	12	....	....		15	20	....
Sou. Ry...	35	..	26	..	18	..	..	....	..	....	....		..	18	....
A. C. L....	25	..	..	..	11		..	....	..	....	....		..	11	....
Sou. Ry...	15	..	..	..	8	..	..	....	..	....	....		..	8	....
Total. ...		..	..	..	19	..	..	....	..	....	....		..	19	....
A. C. L....	40	..	..	..	20	..	..	....	..	....	....		..	20	....
Sou. Ry...	40	..	..	..	..	..	..	....	..	....	....		..	..	....
A. C. L....	30	..	..	..	14	..	..	....	8	....	....		..	..	....
Sou. Ry...	15	..	..	..	8	..	..	....	5	....	....		..	..	....
Total. ...		..	..	..	22	..	..	....	13	....	....		..	..	....
A. C. L....	45	..	..	..	22	..	..	....	13	....	....		..	..	....
Sou. Ry...	45	..	..	..	..	..	..	....	..	....	....		..	..	....

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
A. C. L...	40	..	..	..	15	11	..	..	9	..	....	11	15	..	
Sou. Ry...	15	..	..	..	8	7	..	..	5	..	....	7	8	..	
Total.	...	..	..	..	23	18	..	..	14	..	....	18	23	..	
A. C. L...	55	..	..	..	23	18	..	..	14	..	....	18	23	..	
Sou. Ry...	55	..	..	..	..	..	..	..	..	..	....	..	..	..	
A. C. L...	90	..	27	18	..	..	..	..	12	..	....	..	18	..	
Sou. Ry...	15	..	12	8	..	..	..	..	5	..	....	..	8	..	
Total.	...	..	39	26	..	..	..	..	17	..	....	..	26	..	
A. C. L...	105	..	40	27	..	..	..	..	16	..	....	..	27	..	
Sou. Ry...	105	..	40	..	..	..	..	..	17	..	....	..	..	..	
A. C. L...	100	35	29	..	..	..	..	10	12	..	8.5	..	..	..	
Sou. Ry...	15	16	12	..	..	..	..	5	5	..	4.5	..	..	..	
Total.	...	51	41	..	..	..	..	15	17	..	13	..	..	..	
A. C. L...	115	50	42	..	..	..	..	14	16	..	12	..	..	..	
Sou. Ry...	...	52	42	..	..	..	..	15	18	..	13	..	..	..	
A. C. L...	125	39	33	..	..	17	..	11	13	..	....	17	..	..	
Sou. Ry...	15	16	12	..	..	7	..	5	5	..	....	7	..	..	
Total.	...	55	45	..	..	24	..	16	18	..	....	24	..	..	
A. C. L...	140	52	46	..	..	24	..	15	17	..	....	24	..	..	
Sou. Ry...	140	56	46	..	..	..	..	16	19	..	....	..	..	..	
A. C. L...	150	41	35	28	22	18	..	12	14	..	10.5	18	22	22	25.5
Sou. Ry...	15	16	12	11	8	7	..	5	5	..	4.5	7	8	10	10.5
Total.	...	57	47	39	30	25	..	17	19	..	15	25	30	36	36
A. C. L...	165	55	48	40	30	26	..	16	19	..	15	26	30	36	36
Sou. Ry...	165	60	50	41	31	26	..	17	20	..	15	26	31	36	36
A. C. L...	5	9	..	6	5	5	4	4	4	5	5	..	..	..	
Sou. Ry...	20	18	..	12	10	8	6	5	6	8	9	..	..	..	
Total.	...	27	..	18	15	13	10	9	10	13	14	..	..	..	
A. C. L...	25	27	..	18	15	13	10	9	10	13	15	..	..	..	
Sou. Ry...	25	27	..	18	14	..	..	..	..	..	14	..	..	..	
A. C. L...	10	..	10	8	7	6	5	..	5	..	....	6	7	..	
Sou. Ry...	20	..	14	12	10	8	6	..	6	..	....	8	9	..	
Total.	...	..	24	20	17	14	11	..	11	..	....	14	16	..	
A. C. L...	30	..	24	20	18	14	11	..	11	..	....	14	18	..	
Sou. Ry...	30	..	24	20	..	..	..	..	..	..	....	..	16	..	
A. C. L...	15	..	12	..	8	7	..	..	6	..	....	7	8	..	
Sou. Ry...	20	..	14	..	10	8	..	..	6	..	....	8	9	..	
Total.	...	..	26	..	18	15	..	..	12	..	....	15	17	..	
A. C. L...	35	..	26	..	20	15	..	..	12	..	....	15	20	..	
Sou. Ry...	35	..	26	..	18	..	..	..	..	..	....	..	18	..	
A. C. L...	25	..	..	..	11	..	..	..	..	..	....	..	11	..	
Sou. Ry...	20	..	..	..	10	..	..	..	..	..	....	..	9	..	
Total.	...	..	..	..	21	..	..	..	..	..	....	..	20	..	
A. C. L...	45	..	..	..	22	..	..	..	..	..	....	..	22	..	
Sou. Ry...	45	..	..	..	..	..	..	..	..	..	....	..	20	..	

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
A. C. L...	100	..	..	..	..	..	..	10	12	....	....	..	..	....
Sou. Ry...	20	..	..	..	..	..	..	5	6	....	....	..	..	....
Total. ...		..	..	..	..	..	..	15	18	....	....	..	..	....
A. C. L...	120	..	..	..	..	..	..	14	16	....	....	..	..	....
Sou. Ry...	120	..	..	..	..	..	..	15	18	....	....	..	..	....
A. C. L...	125	39	33	..	..	..	14	11	13	....	....	..	..	....
Sou. Ry...	20	18	14	..	..	..	6	5	6	....	....	..	..	....
Total. ...		57	47	..	..	..	20	16	19	....	....	..	..	....
A. C. L...	145	54	47	..	..	..	20	15.5	18	....	....	..	..	....
Sou. Ry...	145	58	48	..	..	..	..	16.5	19	....	....	..	..	....
A. C. L...	150	41	35	28	..	18	..	12	14	....	....	18	22	....
Sou. Ry...	20	18	14	12	..	8	..	5	6	....	....	8	9	....
Total. ...		59	49	40	..	26	..	17	20	....	....	26	31	....
A. C. L...	170	55	48	40	..	26	..	16	19	....	....	26	30	....
Sou. Ry...	170	60	50	41	..	26	..	17	20	....	....	26	31	....
A. C. L...	5	9	8	6	5	5	4	....	4	....	....	5	5	....
Sou. Ry...	25	20	15	14	11	9	7	....	7	....	....	9	11	....
Total. ...		29	23	20	16	14	11	....	11	....	....	14	16	....
A. C. L...	30	30	24	20	18	14	11	....	11	....	....	14	18	....
Sou. Ry...	30	30	24	20	15	..	..	....	..	....	....	..	16	....
A. C. L...	10	..	10	8	7	6	5	....	5	....	....	6	7	....
Sou. Ry...	25	..	15	14	11	9	7	....	7	....	....	9	11	....
Total. ...		..	25	22	18	15	12	....	12	....	....	15	18	....
A. C. L...	35	..	26	22	20	15	12	....	12	....	....	15	20	....
Sou. Ry...	35	..	26	22	18	..	..	....	..	....	....	..	18	....
A. C. L...	15	..	..	..	8	..	..	....	..	....	....	..	8	....
Sou. Ry...	25	..	..	..	11	..	..	....	..	....	....	..	11	....
Total. ...		..	..	..	19	..	..	....	..	....	....	..	19	....
A. C. L...	40	..	..	..	20	..	..	....	..	....	....	..	20	....
Sou. Ry...	40	..	..	..	..	..	..	....	..	....	....	..	..	....
A. C. L...	25	..	..	..	11	..	..	....	..	....	....	..	11	....
Sou. Ry...	25	..	..	..	11	..	..	....	..	....	....	..	11	....
Total. ...		..	..	..	22	..	..	....	..	....	....	..	22	....
A. C. L...	50	..	..	..	22	..	..	....	..	....	....	..	22	....
Sou. Ry...	50	..	..	..	..	..	..	....	..	....	....	..	..	....
A. C. L...	150	41	35	28	..	18	..	....	14	....	....	18	..	....
Sou. Ry...	25	20	15	14	..	9	..	....	7	....	....	9	..	....
Total. ...		61	50	42	..	27	..	....	21	....	....	27	..	....
A. C. L...	175	55	48	40	..	26	..	....	19	....	....	26	..	....
Sou. Ry...	175	61	51	42	..	28	..	....	21	....	....	28	..	....
A. C. L...	5	9	8	6	5	5	4	4	4	....	3	5	5	....
Sou. Ry...	30	23	18	15	12	10	8	6	8	....	6	10	12	....
Total. ...		32	26	21	17	15	12	10	12	....	9	15	17	....
A. C. L...	35	33	26	22	20	15	12	10	12	....	9	15	20	....
Sou. Ry...	35	33	26	22	18	..	..	....	..	....	9	..	18	....

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
A. C. L...	10	..	..	..	7	..	..	....	..	....	....	..	7	....
Sou. Ry...	30	..	..	..	12	..	..	....	..	....	....	..	12	....
Total. ...		..	..	..	19	..	..	....	..	....	....	..	19	....
A. C. L...	40	..	..	..	20	..	..	....	..	....	....	..	20	....
Sou. Ry...	40	..	..	..	..	..	..	....	..	....	....	..	..	....
A. C. L...	15	..	..	..	8	7	..	....	..	....	....	7	8	....
Sou. Ry...	30	..	..	..	12	10	..	....	..	....	....	10	18	....
Total. ...		..	..	..	20	17	..	....	..	....	....	17	20	....
A. C. L...	45	..	..	..	22	17	..	....	..	....	....	17	22	....
Sou. Ry...	...	..	..	..	20	..	..	....	..	....	....	..	20	....
A. C. L...	20	..	..	..	10	..	..	....	..	....	....	..	10	....
Sou. Ry...	30	..	..	..	12	..	..	....	..	....	....	..	12	....
Total. ...		..	..	..	22	..	..	....	..	....	....	..	22	....
A. C. L...	50	..	..	..	22	..	..	....	..	....	....	..	22	....
Sou. Ry...	50	..	..	..	..	..	..	....	..	....	....	..	..	....
A. C. L...	25	..	..	..	11	..	..	....	..	....	....	..	11	....
Sou. Ry...	30	..	..	..	12	..	..	....	..	....	....	..	12	....
Total. ...		..	..	..	23	..	..	....	..	....	....	..	23	....
A. C. L...	55	..	..	..	23	..	..	....	..	....	....	..	23	....
Sou. Ry...	55	..	..	..	..	..	..	....	..	....	....	..	..	....
A. C. L...	150	..	..	..	..	18	..	....	..	....	....	18	..	....
Sou. Ry...	30	..	..	..	..	10	..	....	..	....	....	10	..	....
Total. ...		..	..	..	..	28	..	....	..	....	....	28	..	....
A. C. L...	180	..	..	..	..	26	..	....	..	....	....	28	..	....
Sou. Ry...	180	..	..	..	..	28	..	....	..	....	....	28	..	....
A. C. L...	5	..	..	..	5	..	4	....	4	....	....	..	5	....
Sou. Ry...	35	..	..	..	14	..	8	....	8	....	....	..	14	....
Total. ...		..	..	..	19	..	12	....	12	....	....	..	19	....
A. C. L...	40	..	..	..	20	..	12	....	12	....	....	..	20	....
Sou. Ry...	40	..	..	..	..	..	..	....	..	....	....	..	..	....
A. C. L...	10	..	..	..	7	6	5	....	5	....	....	6	7	....
Sou. Ry...	35	..	..	..	14	11	8	....	8	....	....	11	14	....
Total. ...		..	..	..	21	17	13	....	13	....	....	17	21	....
A. C. L...	45	..	..	..	22	17	13	....	13	....	....	17	22	....
Sou. Ry...	45	..	..	..	..	..	..	....	.	....	....	..	..	....
A. C. L...	5	..	8	6	5	5	4	4	4	....	....	5	5	....
Sou. Ry...	40	..	20	17	14	11	8	7	8	....	....	11	14	....
Total. ...		..	28	23	19	16	12	11	12	....	....	16	19	....
A. C. L...	45	..	28	24	22	17	13	11	13	....	....	17	22	....
Sou. Ry...	45	..	28	24	20	..	12	....	12	....	....	..	20	....
A. C. L...	10	..	..	..	7	6	5	....	5	....	....	6	7	....
Sou. Ry...	40	..	..	..	14	11	8	....	8	....	....	11	14	....
Total. ...		..	..	..	21	17	13	....	13	....	....	17	21	....
A. C. L...	50	..	..	..	22	17	13	....	13	....	....	17	22	....
Sou. Ry...	50	..	..	..	..	..	..	....	..	....	....	..	..	....

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	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F
A. C. L...	15	..	..	..	8	7	..	....	6	....	....	7	8	....
Sou. Ry...	40	..	..	..	14	11	..	....	8	....	....	11	14	....
Total. ...		..	..	..	22	18	..	....	14	....	....	18	22	....
A. C. L...	55	..	..	..	23	18	..	....	14	....	....	18	23	....
Sou. Ry...	55	..	..	..	..	..	..	....	..	....	....	..	..	....

Key.

First line of figures, A. C. L. locals less 25%.
Second line of figures, Southern Ry. locals less 25%.
Third line of figures, a combination of first and second.
Fourth line of figures, A. C. L. local for continuous distance.
Fifth line of figures, Southern Ry. local for continuous distance.

312 In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEILL and Others, Defendants.

S. H. Hardwick, being first duly sworn deposes and says, he is Passenger Traffic Manager of the Southern Railway Company, and has been so for several years past, prior to which time he was General Passenger Agent of the Company, and occupied other positions in the passenger service of the Southern Railway Company; that he has read subsection B of the 5th paragraph of defendants' answer in this case; that it is untrue, as stated in said answer in this case; that it is untrue, as stated in said answer, that the Complainant now is and for many years has been giving free transportation in North Carolina as therein alleged; the free transportation which has been given by the Southern Railway Company in North Carolina has been to its officers its directors and employees, and members of their families, and interchange transportation with other lines, and has not been such giving of free transportation as is mentioned in said answer; that such transportation is transportation for which no charge could in the nature of things be made, and if it was made it would cost the company in the shape of wages or other payments, such as it would gain by it. And this affiant denies that there has been discrimination in passenger rates alleged in said answer.

The affiant further states that those rates which were less than its regular rates, were given as has been customary with all railroad companies for special occasions and for the purpose of accommodating pleasure travel, because we believe that such pleasure travel having it optional as to whether or not the traveler would go, would not go unless some special inducements by cheap rates were given, that the other lower rates mentioned in said answer not covered by the pleasure travel, were given in the nature of benevolence or charity, and in accordance with custom which has been universal with carriers for a large number of years; except that the mileage

rate was given for commercial purposes and with view of assisting and building up the general prosperity of the commercial public.

S. H. HARDWICK.

Subscribed and sworn to before me this 26th day of June 1907.

W. S. HYAMS,
[SEAL.] *Clerk U. S. Circuit Court.*

313 In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET AL., Defendants.

Affidavit.

W. H. Tayloe, being first duly sworn, deposes and says:

That he is, and has been for some years past, the General Passenger Agent of the Complainant Southern Railway Company; that he is well acquainted with the passenger tariff of the Complainant for the intrastate business of the Southern Railway Company in North Carolina that that tariff which now exists is the same which was in effect during the whole of the year ending June 30, 1906, and continuously since; that in no instance is said passenger tariff unjustly, unreasonably, or unfairly high, and in no instance is it greater, than a reasonable compensation for the service rendered in consideration thereof; and the affiant further states that the passenger tariff established by the act of the General Assembly of North Carolina ratified on the second day of March, 1907, in the bill in this cause mentioned, is unjustly, unreasonably, and unfairly low, and the rates therein prescribed would not furnish to the complainant, a fair, just, or reasonable compensation for the service rendered in consideration thereof, and would not afford to the complainant a just reasonable, or fair return upon its property used in performing the service. Affiant further says that if said rates were put into effect the revenues of the Complainant would be largely reduced and there would not be any such increase in the amount of its passenger business as would compensate the complainant for the loss of revenue resulting from the lower rate; and affiant further states that there would be no appreciable increase in its passenger business because of such lower rate.

W. H. TAYLOE.

DISTRICT OF COLUMBIA, *City of Washington, To-wit:*

I, Harry F. Pierce, a Notary Public, in and for the City of Washington, in the District of Columbia, do certify that W. H. Tayloe, whose name is signed to the foregoing affidavit, personally appeared before me in my City and District aforesaid, and made oath that the statements contained in the said affidavit are true.

My Commission as Notary Public expires on the 17th day of July 190–.

Given under my hand and official seal, this 8th day of May 1907.

HARRY F. PIERCE,
Notary Public.

[SEAL.]

314 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEILL ET AL., Defendant-.

Affidavit.

The affiant, A. H. Plant, being duly sworn, deposes and says:

That he is, and for some time has been, Comptroller of the Southern Railway Company, and as such has supervision over its accounts, and charge of its books, and that the following is a true statement of the results of operation of Southern Railway Company in North Carolina during the year ended June 30, 1906, under the rates and classifications existing at that time:

Gross earnings from operation in North Carolina including both interstate and intrastate.	$12,043,727.13
Operating cost to earn one dollar on intrastate revenue in North Carolina was not less than.	86.35¢

While it is impossible to state the exact cost to earn a dollar of intrastate revenue, it is certain that it cost much more than the average cost to do all business, and at least the above mentioned figures, as this affiant verily believes.

315 Gross earnings in North Carolina from intrastate traffic:

From passengers	$1,565,695.33	
From freight	1,322,564.30	
From mail	230,383.78	
From express	169,474.89	
From miscellaneous	36,507.44	
Total gross revenue from intrastate traffic in North Carolina for said year		$3,324,625.74
Minimum expense of earning this gross intrastate revenue, on the basis of 86.35¢ to earn one dollar.		2,870,814.33
Maximum net earnings from intrastate traffic in North Carolina for said year, without allowing for taxes		$453,811.41

Taxas chargeable to North Carolina for the fiscal year ended June 30, 1906, were...	$269,651.18	
The proportion of intrastate gross earnings to total gross earnings in North Carolina was 27.60%.		
27.60% of the total taxes above mentioned which should be charged to intrastate traffic shows intrastate taxes to have been for that year	$74,423.73	
Improvements and betterments not capitalized chargeable to North Carolina during the year for the purpose of keeping the property up to modern standard and without additions to it, amounted to	$197,945.81	
27.60% of which is assignable to intrastate traffic or	$54,633.04	
Total taxes and improvements and betterments not capitalized chargeable against intrastate traffic for said year		129,056.77
Leaving as the maximum net intrastate earnings in North Carolina for said year, after deducting the said proportion of taxes and the said proportion of improvements and betterments not capitalized.		$324,754.64
Applying to the above mentioned intrastate business in North Carolina for the year ended June 30, 1906, the passenger and freight rates proposed by the acts of the Legislature of North Carolina passed during March of the current year, there would have been a loss of passenger revenue of	$275,055.53	
And a loss in freight revenue of.....	21,691.64	
Or a total of.....		296,747.17
Making the net earnings from intrastate operations under the proposed rates and classifications.....		$28,007.47

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During the said year the value of the physical properties of this company in North Carolina according to the assessment made by the State for the purpose of taxation was.....	$26,134,865.00	
The proportion of this tax value used for intrastate purposes should be ascertained on the basis of user, which is on the basis of the proportion of gross earnings from intrastate business to the total gross earnings for all business for said year in North Carolina, or 27.60% of the said assessed value, which amounts to.....		7,213,222.74

The maximum net revenue from intrastate traffic in North Carolina under the existing rates would only yield an interest upon said proportion of said tax value, per annum	4.50%
Under the proposed rates and classifications the net revenue from intrastate traffic in North Carolina would only yield as interest upon said proportion of said tax value, per annum	.39%

The affiant further says that the foregoing results of operation in the State of North Carolina for the year ended June 30, 1906, show a larger net result to the Company than is fairly representative of the results of the Company's operations in the future, for the reason that since the thirtieth day of June, 1906, the close of said fiscal year, there has been a large increase in the expenses of the Company, due to increases in wages, and to the increase in cost of all material and supplies and other expenses, as will be shown by the following statement for the system; and that such increase in expenses has been relatively much larger than the increase in gross earnings:

For ten months ended April 30, 1907, the gross earnings of the Company increased over the same period for the previous year	$2,406,517.82
Whereas the operating expenses and taxes increased for the same period	4,615,139.50
Showing a decrease in net earnings for the ten months mentioned of	2,208,621.68

The results of operations with respect to intrastate business in North Carolina for the nine months ending March 31, 1907, (which is all of the present fiscal year for which the figures are now available) are as follows, as compared with results of operation
317 with respect to intrastate business in North Carolina for the corresponding period of the preceding year:

Statement of Results of Operation of Southern Railway Company in North Carolina During Nine Months Ended March 31, 1907, under Rates and Classifications Existing at that Time.

Gross earnings in North Carolina from intrastate traffic:

From passengers	$1,315,383.77	
From freight	1,033,691.12	
From mail	166,532.49	
From express	143,707.50	
From miscellaneous	32,881.31	
Total gross revenue from intrastate traffic in North Carolina for said nine months		$2,692,196.19
Minimum expense of earning this gross intrastate revenue, on the basis of 90.53¢ to earn one dollar		$2,437,245.21

Maximum net earnings from intrastate traffic in North Carolina for said nine months, without allowing for taxes		
Taxes chargeable to North Carolina for the nine months ended March 31, 1907, were $209,762.60		254,950.98
The proportion of intrastate gross earnings to total gross earnings in North Carolina was... 28.74%		
28.74% of the total taxes above mentioned which should be charged to intrastate traffic shows intrastate taxes to have been for the nine months	$60,285.77	
Improvements and betterments not capitalized chargeable to North Carolina during the nine months for the purpose of keeping the property up to modern standard and without additions to it, amounted to	$83,155.71	
28.74% of which is assignable to intrastate traffic of	$23,989.95	
Total taxes and improvements and betterments not capitalized chargeable against intrastate traffic for said nine months		$84,184.72
Leaving as the maximum net intrastate earnings in North Carolina for said nine months, after deducting the said proportion of taxes and the said proportion of improvements and betterments not capitalized		$170,766.26

318 *Statement of Results of Operation of Southern Railway Company in North Carolina During Nine Months Ended March 31, 1906, under Rates and Classifications Existing at that Time.*

Gross earnings in North Carolina from Intrastate traffic:

From passengers	$1,158,398.44	
From freight	979,501.79	
From mail	171,917.61	
From express	123,466.64	
From miscellaneous	23,828.01	
Total gross revenues from intrastate traffic in North Carolina for said nine months..		$2,457,112.49
Minimum expense of earning this gross intrastate revenue, on the basis of 83.74¢ to earn one dollar.		2,057,586.00
Maximum net earnings from intrastate traffic in North Carolina for said nine months without allowing for taxes		$399,526.49

Taxes chargeable to North Carolina for the nine months ended March 31, 1906, were	$199,047.64	
The proportion on intrastate gross earnings to total gross earnings in North Carolina, was 27.35%.		
27.35% of the total taxes above mentioned which should be charged to intrastate traffic shows intrastate taxes to have been for the nine months	$54,439.53	
Improvements and betterments not capitalized chargeable to North Carolina during the nine months for the purpose of keeping the property up to the modern standard and without additions to it, amounted to	$119,931.49	
27.35% of which is assignable to intrastate traffic, or	$32,801.26	
Total taxes and improvements and betterments not capitalized chargeable against intrastate traffic for said nine months		87,240.79
Leaving as a maximum net intrastate earnings in North Carolina for said nine months after deducting the said proportion of taxes and the said proportion of improvements and betterments not capitalized		$312,285.70

Affiant states that on account of the greatly increased cost of doing business in the State of North Carolina for the period of nine months ended March 31, 1907, the cost of earning a dollar of intrastate revenue was at least correspondingly increased and was not
319 less than the figures of 90.53¢ used in the foregoing statement with respect to said period of nine months.

It has not been practicable to make an accurate estimate of the loss of revenue which would have resulted from applying to the above mentioned intrastate business in North Carolina for said period of nine months the passenger and freight rates proposed by the acts of the Legislature of North Carolina passed during March of the current year, but affiant believes that said losses would have been proportionately the same as are above shown with respect to the year ended June 30, 1906.

(Signed) A. H. PLANT.

DISTRICT OF COLUMBIA, *City of Washington, To wit:*

I, Alfred H. Oliver, a Notary Public in and for the City of Washington in the District of Columbia do certify that A. H. Plant, whose name is signed to the foregoing affidavit, personally appeared before me in my City and District aforesaid, and made oath that the statements contained in the said affidavit are true.

My commission as Notary Public expires on the 18th day of August, 1911.

Given under my hand and official seal this 24th day of June, 1907.

[NOTARY SEAL.] (Signed) ALFRED H. OLIVER,
Notary Public.

320 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET AL., Defendants,

Affidavit.

C. H. Ackert, being first duly sworn deposes and says that he is Vice-President and General Manager of the complainant Southern Railway Company; that he has had experience in railroad life for about thirty-five years, having been for about eighteen years connected with the duties of management of several railroads; that in the year 1902 he became General Manager of the Southern Railway Company, and has occupied that position ever since, with the exception of about one year and seven months, during which time the General Manager of the company reported to him as Vice-President and as such Vice-President, during said excepted period, he had general charge of the operating department of the railroad;

That during all the time that he has been connected with the said Company, its railway has been and is now skilfully, honestly and economically managed and operated; that the officers, agents and employees have at all times used all *responsible* efforts to pro-
321 cure freight, passenger, mail, express and other traffic, that the gross earnings of the railway company from all kinds of traffic, both state and interstate, have been as large as was reasonably practicable to make them under the circumstances and conditions surrounding the company; that the operating expenses and other expenses have been kept as low as practicable, having in view the safe operation of trains and the proper maintenance of the property for public service; that the supplies, material and labor used for these purposes have been procured at as low a price as was reasonably practicable; that the amount paid by the company for general officers' salaries and for employees' wages has been as low as practicable, considering the necessity for employing competent officers and employés; that the company has at all times confined its operating expenses, its taxes, its interest charges and every other expenditure within the lowest and narrowest limits reasonably practicable, under the existing conditions;

That as the result of operation of the Southern Railway system for the last two fiscal years during which the earnings of the com-

pany were greater than for any previous year of the company's existence, its net earnings, after paying operating expenses, taxes, and interest on its bonds, and before paying any dividends whatever on any class of its stock, were respectively as follows:

For the year ended June 30, 1905.....	$5,151,632.00
For the year ending June 30, 1906.....	5,229,065.97

After paying a dividend of five per cent. on its preferred stock and no dividend on its common stock, the surplus during these years was as follows:

322	For the year ended June 30, 1905.....	$2,151,632.00
	For the year ended June 30, 1906.....	2,229,065.97

That since the close of the fiscal year ended June 30, 1906, the expenses of the company have enormously increased, and this has been largely due to increase in wages, to increase in cost of all material and supplies, to increased expense of operation due to overtime incident to congested conditions of traffic and limited track and other facilities for the handling of the business; that such increases in wages since the first day of July, 1906 (the amounts here given being estimated for the current fiscal year and approximately correct) have been as follows:

Engineers and firemen.....	$278,400.00
Hostlers	24,000.00
Trainmen	301,200.00
Yardmen	50,400.00
Operators	60,000.00
Shopmen	228,000.00
Trackmen and bridgemen.....	102,000.00
	$1,044,000.00

In addition to the above increases there have been *been* increases in agents' and clerks' pay, and in the pay of other employees; that the increase in the price of supplies, etc., may be illustrated as follows:

Since 1898, bridge timber has increased from $9.36 to $20.52 per thousand feet; crossties from 28¢ to 34½¢ per tie; steel rails from $17.75 per ton to $28.00 per ton; locomotives from $11,392 to from $16,000 to $20,000; passenger coaches from $6,315 to $9,468; freight cars from $500.43 to $765; coal cars from $368. to $1,135; the cost of labor has increased per mile of road from
323 $1,621.67 in 1895 to $2,874.71 in 1906, and from $2,513.64 per mile of road in 1905 to $2,874.71 in 1906; that the taxes of the company per mile of road have since 1895 increased 63.41 per cent.;

That the management is putting forth its utmost exertion to reduce the expenses as much as possible, but it is manifest that, with

all the increased expenses, it is impossible at the same time to substantially reduce the company's revenue; that it is to the interest, not only of the company but of the public, that its dividends should be continued so as to establish the company's credit upon a basis which will enable it to increase its facilities for handling the business tributary to its lines; that as a result of the efforts to reduce the revenues of the carriers generally the credit of the railroad companies has been greatly impaired; that it is impossible to keep the facilities of the company up to the requirements of the public business without a stable and reliable credit, and that it is impossible to establish and maintain such credit if the revenues of the company are to be, to any considerable extent, reduced; that these figures, while given for the System, are proportionately true for the State of North Carolina;

That the effect of what is known as the North Carolina sixteen hour law will be to increase the expenses at every block office where it is in force by fifty per cent.; and that as to trainmen the increase in expense would be very substantial and material, although the full amount of it is impossible at present to estimate; the reason for this increase as to trainmen growing, in the opinion of this affiant, out of the necessity for changing the lengths of the several divisions over which the trains run, which will necessitate an enormous outlay and will involve additional equipment and additional
324 men to operate trains. The full amount of this has not yet been figured out and an estimate for the system is now being prepared.

(Signed) C. H. ACKERT.

DISTRICT OF COLUMBIA, *City of Washington, To wit:*

I, Harry F. Pierce, a Notary Public, in and for the City of Washington, in the District of Columbia, do certify that C. H. Ackert, whose name is signed to the foregoing affidavit, personally appeared before me in my City and District aforesaid, and made oath that the statements contained in the said affidavit are true.

My commission as Notary Public expires July 17, 1910.

Given under my hand and official seal this 24th day of June, 1907.

(Signed) HARRY F. PIERCE, [SEAL.]
Notary Public.

325 U. S. Circuit Court. Filed Jun. 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEIL ET AL., Defendants.

STATE OF NORTH CAROLINA, *County of Buncombe:*

Personally appeared before me A. H. Plant, who first being duly sworn deposes and says:

That he is Comptroller of Southern Railway Company and as such is in charge of its Accounting Department, and that the following table was prepared under his directions and supervision and is true to the best of his knowledge and belief:

Statement Showing Population—Total Railway Earnings and Average Earnings per Capita in Certain States.

State.	Year.	Population 1900.	Total railway earnings.	Earnings per capita.
Connecticut	1906	908,420	$ 55,810,518.53	$ 61.44
Massachusetts	1906	2,805,346	105,751,066.00	37.70
Pennsylvania	1906	6,302,115	713,431,278.00	113.21
New York	1905	7,268,894	334,434,456.34	46.01
Virginia	1905	1,854,184	39,023,547.94	21.05
North Carolina	1906	1,893,810	25,638,552.45	13.54
Georgia	1906	2,216,331	37,106,555.77	16.74
Alabama	1903	1,828,697	27,615,567.99	15.10
Ohio	1904	4,157,545	115,923,167.36	27.88
Illinois	1905	4,821,550	141,454,459.00	29.34

(Signed) A. H. PLANT.

Subscribed and sworn to before me this 26 day of June, 1907.

[SEAL.] (Signed) W. S. HYAMS,
Clerk U. S. Circuit Court.

326 U. S. Circuit Court. Filed Jun. 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEIL ET AL., Defendants.

H. B. Spencer, being first duly sworn, deposes and says:

That he is Vice-President of the Southern Railway Company, that he has had experience in railroad service, as clerk in the Superintendent's office, as Chief Clerk, as Assistant Superintendent in charge of transportation, as Superintendent of the St. Louis-Louisville Divisions of the Southern Railway Company, as Assistant General Manager, St. Louis-Louisville Lines, Southern Railway Company, as General Manager of those lines, and as General Manager of the Eastern and Western Districts of the Southern Railway Company, besides his duties pertaining to his present position as Vice-President of said Company; that he has had much practical experience in the management of railroads and the cost of operation;

That this traffic of Southern Railway in North Carolina can be divided as follows:

1. Interstate traffic, which moves from beyond one border to beyond the other border of the State; 2. Interstate traffic which originates in North Carolina and is destined to a point outside of the State, or which originates outside of the State and is
327 destined to points within the State; or which in the course of its transportation from a point in North Carolina to another point in North Carolina passes outside of the borders of the State; 3. The traffic which originates at a point in North Carolina not going outside of the borders of the State, and is destined to another point in North Carolina, this third class of traffic being known as intrastate traffic. All of this latter class of traffic of the Southern Railway Company in North Carolina, practically speaking, is local traffic handled on local trains, the exceptions being for practical purposes negligible.

The cost of handling local traffic is greater than the cost of handling the general traffic, for the reason that the starting and stopping of trains add to the wear and tear of equipment, and we get less use from equipment per unit of dollar earned. We have to pay higher wages for the short haul then we do for the long through hauls; we are unable to handle as many tons per train of local traffic as we do on the through trains, consequently the unit of cost is higher on the local trains; that the unit of cost at stations considering the miles hauled of a ton of traffic is greater on the local traffic and this adds materially to the cost of handling local traffic and it varies considerably! In some instances this excess cost at stations for local traffic will run as high as three or four times what it will cost to

do the general business; in other cases it will be less than that, probably in no event less than double what it cost to do the general business.

That a local train is started out with traffic that has to be distributed at local stations, and of course this traffic only moves part of the distance. The local trains set out — this traffic and pick up other traffic, but the character of the traffic and the places
328 at which we have to pick it up are such that we cannot keep the train full to the maximum tonnage consequently, instead of the train going over the road with full tonnage, it averages materially less than the through train and materially less than the general average, varying with the differing conditions.

That of the cost of earning a dollar on the system at least thirty eight to forty cents is the cost of conducting transportation, the balance of the expense being divided between maintenance of way and structures, maintenance of equipment, and general expenses.

That while the wear and tear on the track and on the equipment is greater for local trains than for through trains, because of the more frequent starts and stops, I will eliminate this difference for purposes of the calculation about to be made. About half of the cost of conducting transportation of thirty-eight to forty cents, namely, nineteen or twenty cents is directly at-ributable to train movement. It consists of the engineer's wages, the wages of the other trainsmen, the cost of coal consumed and other costs. This portion of the cost of conducting transportation fluctuates directly with the business, that is, if we do not run the train we do not have the expense, and if we run that particular train we do have that expense. The other portion of the cost of conducting transportation is expenses such as station agents, telegraph operators, superintendents, and miscellaneous items that come in to make up the total cost of conducting transportation. These latter do not fluctuate with the business, and cannot be varied from day to day as the traffic varies, as you can your train service. This cost of nineteen or twenty cents of conducting transportation which fluctuates with the trains will fluctuate directly as between local and through business. As indicated above, the local service for this par-
329 ticular item, which fluctuates with the movement, costs from two to four and perhaps more than five times as much in the case of the local train as it does for the through train per unit of cost, but for the purposes of this statement I feel entirely safe in saying that, so far as the Southern Railway is concerned our local service will cost at least double what the general average service will cost with respect to this item of conducting transportation.

In other words, this nineteen or twenty cents which it costs on the general average service will, for local service, be at least thirty eight of forty cents, and the excess cost of doing local business is at least nineteen or twenty cents, and may be and I think is, considerably over that. This is the minimum cost, in my judgment, for doing the local traffic as compared with the general average of the traffic company.

Considering the fact that this excess of the cost of local as compared with through, in this particular item of cost, may run as high as three, four and five times, and even more than five times as much for the local as for the through, I feel safe in saying that the cost of doing the local business including both passengers and freight, is at least nineteen or twenty cents more to earn a dollar than the average cost to earn a dollar from all business.

That the bulk of the intrastate passenger business in North Carolina is done on local trains; some of it is of course done on through trains which pick up passengers at one point in the state and put them down at another point. As to the cost of doing the local passenger business as compared with the through passenger business, on through trains, it is difficult for me to make any intelligent comparison, but it is found by experience of the Southern Railway Company in North Carolina that the earnings on the local
330 passenger trains in that State on which the great bulk of the intrastate passenger business is done is very much less per train mile than the earnings from the through trains in the same state. In fact they are frequently as much as fifty cents less per train mile, and while there may be some trains doing local business in North Carolina that earn enough to pay the train expenses, I am convinced that, taking the intrastate passenger business as a whole in North Carolina, the average cost of the train is greater than the average earnings of the train. This is to a considerable extent due to the fact which we find true in experience that if a local train starts out with a pretty good load of passengers it will be distributing them along at nearby points until the load becomes practically exhausted, and that then there will be an interval more or less extended, but very substantial and appreciable, during which the train will run practically empty, and as it approaches its other destination, which is probably at some populous center, it will begin to pick up passengers, and will increase its load as it approaches the point of destination, but when the whole load is averaged it is found that the number of passengers which the train carries per mile for the whole mileage of its run is very small, consequently, earnings from the train are correspondingly thin. As an element of the cost it should also be remembered that the local passenger trains make very much more frequent stops, with corresponding wear and tear upon the equipment and track, and that it takes longer to cover the same distance than the through trains, and consequently the consumption of fuel is continuing during stops: that there is comparatively small difference in the rate of speed between stations of local passenger trains and through passenger trains.

(Signed) H. B. SPENCER.

331 Subscribed and sworn to before me this 26th day of June, 1907.

[SEAL.] (Signed) W. S. HYAMS,
Clerk U. S. Circuit Court.

332 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the District Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN McNEILL ET AL., Defendants.

Affidavit.

The affiant, A. H. Plant, being duly sworn, deposes and says:

That he is, and for some years past has been, Comptroller of the Southern Railway Company and as such has supervision over its accounts, and charge of its books, and that the following is a true statement of the results of operation of Southern Railway Company in North Carolina during the year ended June 30, 1906, under the rates and classifications existing at that time:

Gross earnings from operation in North Carolina, including both interstate and intrastate.	$12,043,727.13
Operating cost to earn one dollar of intrastate revenue in North Carolina was not less than.	86.35¢

While it is impossible to state the exact cost to earn a dollar of intrastate revenue, it is certain that it cost much more than the average cost to do all business, and at least the above mentioned figures, as this affiant verily believes.

333 Gross earnings in North Carolina from intrastate traffic:

From passengers	$1,565,695.33	
From freight	1,322,564.30	
From mail	230,383.78	
From express	169,474.89	
From miscellaneous	36,507.44	
Total gross revenue from intrastate traffic in North Carolina for said year		$3,324,625.74
Minimum expense of earning this gross intrastate revenue, on the basis of 86.35¢ to earn one dollar		2,870,814.33
Maximum net earnings from intrastate traffic in North Carolina for said year, without allowing for taxes		$453,811.41
Taxes chargeable to North Carolina for the fiscal year ended June 30, 1906, were	$269,651.18	
The proportion of intrastate gross earnings to total gross earnings in North Carolina was 27.60%.		

27.60% of the total taxes above mentioned which should be charged to intrastate traffic shows intrastate taxes to have been for that year	$74,423.73	
Improvements and betterments not capitalized chargeable to North Carolina during the year for the purpose of keeping the property up to modern standards and without additions to it, amounted to	$197,945.81	
27.60% of which is assignable to intrastate traffic, or	$54,633.04	
Total taxes and improvements and betterments not capitalized chargeable against intrastate traffic for said year		129,056.77
Leaving as the maximum net intrastate earnings in North Carolina for said year, after deducting the said proportion of taxes and the said proportion of improvements and betterments not capitalized		$324,754.64
Applying to the above mentioned intrastate business in North Carolina for the year ended June 30, 1906, the passenger and freight rates proposed by the acts of the Legislature of North Carolina passed during March of the current year, there would have been a loss in passenger revenue of	$275,055.53	
And a loss in freight revenue of	21,691.64	
Or a total loss of		296,747.17
Making the net earnings from intrastate operations under the proposed rates and classifications		$28,007.47
During the said year the value of the physical properties of this Company in North Carolina, according to the assessment made by the State for the purpose of taxation, was		$26,134,865.00
The proportion of this tax value used for intrastate purposes should be ascertained on the basis of user, which is on the basis of the proportion of gross earnings from intrastate business to the total gross earnings from all business for said year in North Carolina, or 27.60% of the said assessed value, which amounts to		7,213,222.74
The maximum net revenue from intrastate traffic in North Carolina under the existing rates would only yield as interest upon said proportion of said tax value, per annum		4.5%
Under the proposed rates and classifications the net revenue from intrastate traffic in North Carolina would only yield as interest upon the said proportion of said tax value, per annum		.39%

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The affiant further says that the foregoing results of operation in the State of North Carolina for the year ended June 30, 1906, show a larger net result to the Company than is fairly representative of the results of the Company's operations in the future, for the reason that since the thirtieth day of June, 1906, the close of said fiscal year, there has been a large increase in the expenses of the Company, due to increases in wages, and to the increase in cost of all material and supplies and other expenses, as will be shown by the following statement for the system:

For the six months ended December 31, 1906, the gross earnings of the Company increased over the same period of the previous year.....	$1,711,861.79
Whereas the operating expenses and taxes increased for the same period.....	2,623,979.77
Showing a decrease in net earnings for the six months mentioned of.....	912,117.98

335 In addition to the foregoing increases in wages and other expenses, the Company is confronted with still further very substantial demands for increases in wages. While the above figures are for the system, a proportionate part of said increase in expenses would apply to North Carolina.

(Signed) A. H. PLANT.

DISTRICT OF COLUMBIA, *City of Washington, To wit:*

I, Alfred H. Oliver, a Notary Public, in and for the City of Washington, in the District of Columbia, do certify that A. H. Plant, whose name is signed to the foregoing affidavit, personally appeared before me in my City and District aforesaid, and made oath that the statements contained in the said affidavit are true.

My commission as Notary Public expires on the 18th day of August, 1911.

Given under my hand and official seal, this 8th day of May, 1907.

[NOTARY SEAL.] (Signed) ALFRED H. OLIVER,
Notary Public.

336 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
FRANKLIN MCNEILL ET AL., Defendants.

Affidavit.

S. H. Hardwick, being first duly sworn, deposes and says, that he is Passenger Traffic Manager of the Southern Railway Company; that

he has occupied that position since the first day of May, 1904; that prior to that time he was, from January first, 1901, General Passenger Agent of said Company, and prior to January first, 1901, Assistant General Passenger Agent of the same Company for seven years, and prior to that time was Assistant General Passenger Agent of the Richmond and Danville for a number of years, and has been engaged in passenger business altogether for about twenty-eight years;

That the rates of passenger charges for the Southern Railway Company now in force for intrastate business in North Carolina are respectively three and one-fourth cents per mile for first class passengers and two and three-fourths cents per mile for second class passengers; that the said rates were fixed by the Corporation Commission of North Carolina under the law of that State which required said Commission to make reasonable and just rates of freight and passenger charges over the lines of railroad in that state, including the lines of the complainant, and this affiant says that at the time said rates
337 were so fixed by the Commission the cost of performing the passenger service of the Company was greatly less than at present, and since they were so fixed such cost has largely increased by reason of the increase in cost of labor, the increase in the cost of material, and the increase in the cost of everything which a railroad company is required to buy to perform such service.

Affiant further says that the said rates are not higher than a reasonable compensation for the service rendered by it to the travelers on its lines, and that they are not higher than are just and reasonable, whether considered from the standpoint of the service rendered, or from the standpoint of rates charged on other railroads and in other jurisdictions for similiar services, and they are in no sense excessive or extortionate; that they are not unjustly, unduly, unreasonably, or illegally discriminating as between individuals, nor as between localities, and that, in view of the increased expense aforesaid, said rates should, in order to be now just and reasonable, be increased, instead of being decreased; that the interstate rates of the company are made, and necessarily made, upon a combination of locals, or by the use of locals as factors, and that, unless this were so, it would be possible for a passenger to buy a ticket from a point outside of the state to a point just across the border within the state, and then buy a second ticket from the latter point to some other point within the state, and that in consequence the interstate passenger business of this company would be greatly affected, and its rates for such interstate service largely reduced by the rates proposed in the said act in respect to passenger service.

This affiant further says that he has had a large experience in passenger business, and that he is convinced that there will be
338 no compensatory increase in the passenger business of the company resulting from the proposed reduced rates, and that there will be no appreciable or substantial increase whatever in such business due to such reduced rates; that if there should be an increase in the passenger travel sufficient to make up the loss in gross revenue, such increased travel could not be accommodated without large in-

crease in the facilities, and consequent increases in expense, for the reason that a carrier must at all times be provided with facilities to handle the maximum amount of passenger travel that may be reasonably expected, and cannot limit its facilities only to the average travel, and if there should be a very large increase in the number of passengers the present maximum would be correspondingly increased, and in consequence of such increase in the present maximum of travel there would be a necessity for increase in facilities to accommodate it; that the lines of the Company in North Carolina run through a sparsely populated section, in which the average population per square mile is only forty six whereas the average population per square mile in the state of Ohio is one hundred and five, in the State of Pennsylvania is one hundred and forty-seven, in the State of New York is one hundred and sixty, and in the State of Massachusetts is three hundred and seventy, and that in such a sparsely settled country it is impossible by low rates to so stimulate passenger travel as to create a substantial additional volume; that such business as can be stimulated by low rates is excursion business, and business for special occasions, in respect to which the company now offers, and for many years has offered, rates very much below its regular rates, and very much below the rates proposed in said act; that such business cannot be preserved if the rates now being charged for it are increased up to the rates proposed in the said bill.

That the proposed passenger act provides for a free baggage allowance of two hundred pounds, whereas, now, the free baggage
339 allowance is only one hundred and fifty pounds, and that the loss of revenue on this account has not been included in the figures given for the decrease incident to the said reduction of rates, and approximately the loss from this item of increased baggage allowance, for intrastate points alone, will amount to $30,517.00 per annum, if all passengers carrying baggage should take advantage of the full increased baggage allowance.

(Signed) S. H. HARDWICK.

DISTRICT OF COLUMBIA, *City of Washington, To wit:*

I, Harry F. Pierce, a Notary Public, in and for the City of Washington, in the District of Columbia, do certify that S. H. Hardwick, whose name is signed to the foregoing affidavit, personally appeared before me in my City and District aforesaid, and made oath that the statements contained in the said affidavit are true.

My commission as Notary Public expires July 17, 1910.

Given under my hand and official seal, this 24th day of June, 1907.

(Signed) HARRY F. PIERCE.
[NOTARY SEAL.] *Notary Public.*

COPY BOUND CLOSE

340 U. S. Circuit Court. Filed Jun- 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina. In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

FRANKLIN MCNEIL, SAMUEL L. RODGERS, E. C. BEDDINGFIELD, A. D. GILMER, and HAYDEN CLEMENT, the First Three Constituting the Corporation Commission of North Carolina, and the said R. D. Gilmer, Holding the Position of Attorney General of North Carolina, and the said Hayden Clement, Holding the Position of Assistant Attorney General of North Carolina.

Affidavit.

J. W. Cone, being first duly sworn, deposes and says: That he is a resident of the City of Greensboro, North Carolina; that he is Vice-President of the Proximity Manufacturing Company; that I is resided in the said City of Greensboro for about twelve years. at he is also interested in many other enterprises in and around the said City of Greensboro and in the County of Guilford and elsewhere; that by reason of his position in the industrial world and in the world of trade, he is familiar with and knows the usual and ordinary rate of interest received and demanded upon money loaned upon good security in the section of North Carolina in which affiant lives; and that the usual and ordinary rate of interest is six per cent.; that this affiant is familiar with what is considered a fair earning upon money invested in industrial business or manufacturing and that this affiant would consider ten per cent. upon the capital stock or upon the money invested a very low average rate or earning for money invested in trade or manufactories or commerce in that section of the state in which affiant lives, in which the business is economically operated and conducted with average skill, and this affiant
341 knows of many instances where a rate of earning is much higher than ten per cent.; and that affiant is not in any way connected with or interested in any railway company and particularly the Southern Railway Company.

(Signed) JULIUS W. CONE.

Sworn and subscribed to before me this the 15 day of June, 1907.

[NOTARY SEAL.] (Signed) THOMAS S. BEALL, *N. P.*

I CENTER

342 U. S. Circuit Court. Filed Jun. 26, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Eastern District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

FRANKLIN McNEIL ET ALS.

The affiant, A. J. Earling, states that he is President of the Chicago, Milwaukee & St. Paul Railway Company, with office at Chicago, Illinois.

He states that he has been in the railroad business holding various positions, since the Spring of 1865; and that during all of his railway service, in order to perform his duties, it has been necessary for him to consider, examine, and determine questions affecting the transportation business upon the railways with which he has been connected, and that the transportation business has been his principal business during his connection with said railways. He states that it is not possible for any one charged with the duties of maintenance, operation, providing of equipment, and the conduct of the transportation business, to do so successfully without the most careful and laborious effort in the direction of efficiency and economy; and that it requires years and years of experience to operate and maintain a railroad efficiently, to render proper service and do it economically; and that it requires not only experience but constant and vigilant attention. He states that he has given a great deal of consideration for many years to the relative transporta-

343 tion expense of local and through traffic and that from his experience and the study which he has given to that subject he states that he has found that in proportion to the earnings it costs at least twice or three times as much to do the local business of a railroad as it does to do the through business; for instance, in doing the local business the train starts out from its terminus with a very small amount of freight—perhaps one, two or three cars, as the case may be, perhaps none at all,—and, as the train proceeds to the end of the run, it picks up freight and cars here and there. If there is traffic enough on the line to fill out that train to the capacity of the locomotive when it shall reach the end of its run, then starting in with little or no freight from the beginning of its run and ending at the destination of the train at the end of its run with a full train, there is an average of one-half load over the entire part of the line over which the train runs. There will not have been more than half a load for that locomotive spread over the entire run of the train. It sometimes happens that there is not sufficient traffic to fill the train going over the entire run, and the train frequently arrives at the end of the run with only—say, 25 per cent. of a full load, sometimes less. Therefore, in such a case the expense in proportion to the earnings is increased *many* times. This therefore, shows conclusively that in proportion to the earnings its costs at least two or three times as much, and some railroad experts have put it at four times as much, to do the local business as it does to do the through business. Affiant states it frequently oc-

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EXHIBIT G.

Filed in this office, July 20, 1907, W.S.Hyams, Clerk.

In re Jas. H. Wood.

The Weather
Showers.

THE ASHEVILLE CITIZEN.

Something to sell ?
Use Citizen Want Ads.

Vol. XXII. No 219 Asheville, N.C. Price Five Cents.
Saturday Morning, July 20, 1907.

$30,000 Fine against Southern.

President Finley and Gen. Counsel Humphrey arrive on Special Train.

Sensational Trial is Ended Without Interference By Judge Pritchard.

A NOMINAL FINE IS IMPOSED ON GREEN

leav udge Long

Arguments.

The arguments today were by F. H. Busbee, Ex-Judge A. C. Avery, and General Counsel A. P. Thom, of the Southern for the defense tnd E. J. Justice and Ex-Governor Charles B. Aycock for the prosecution. Ex-Judge Avery for the defense said that forty years ago he fought battles for state rights young man. And through all these years of his professional and judicial service on the bench he had given his time to efforts to fix the lines between the state and the federal court

AGENT GREEN RESIGNS HIS POSITION

Vol. XXII, No 219. Asheville, N.C. Price Five Cents.
Saturday Morning, July 20, 1907.

$30,000 Fine against Southern.

President Finley and Gen. Counsel Humphrey arrive on Special Train. leav udge Lon

Sensational Trial is Ended Without Interference By Judge Pritchard.

A NOMINAL FINE IS IMPOSED ON GREEN

Southern Has Ten Days In Which to Appeal From Fine Imposed.

Special to The Citizen.

RALEIGH, July 19.—The sensational indictment and trial of the Southern Railway Company and City Ticket Agent Green for violating the new State 2 1-4 cent passenger rate law with the threatened interference of Federal Circuit Court process to arrest trial in the State court, terminated this evening in the State court with a verdict of guilty, both as to the Southern and Agent Green and the imposing of a sentence of $30,000 fine on the Southern and the imposing of a nominal fine on the agent who pledged himself not to further violate the law. Green was given the choice of abandoning the sale of tickets and paying a nominal fine or standing out against the State court and receiving a sentence to prison and possibly the chain gang. In choosing to pay the fine he stated that he felt that he was guilty of no wrong, but had an aged and ill mother who could not understand the situation and lest further resistence might embitter her life he would not resist further. The understanding is that Green will be given some other position with the Southern. However the issues and ends involved in the imprisonment for the Southern exist at Asheville, where the cases will be carried right up to the United States Supreme Court and there will the affidavits setting out that the persecution of the Southern's agents is, as in Raleigh, forcing their agents to leave the service, thereby wrecking the business of the company. As to the fine of $30,000, the Southern has ten days in which to file notice of appeal.

Arguments.

The arguments today were by F. H. Busbee, Ex-Judge A. C. Avery, and General Counsel A. P. Thom, of the Southern for the defense and E. J. Justice and Ex-Governor Charles B. Aycock for the prosecution. Ex-Judge Avery for the defense said that forty years ago he fought battles for state rights. He was a states' rights young man. And through all these years of his professional and judicial service on the bench he had given his time to efforts to fix the lines between the state and the federal court and he was sure that the course being pursued by the defense was in no way an invasion of states' rights as compared with the rights of citizens, individual or corporate. Ex-Governor Aycock for the prosecution took the ground that the state is standing squarely on its rights. The railroad business is quasi public and the nation fixes interstate rates and the state regulates rates within the bounds of the state. This is what North Carolina has done. He charged that the ruling spirit of the defense in this case seemed to be contempt for the state court. Law is supreme in the state of North Carolina and every one, rich and poor, powerful and weak must in the end obey and pay the consequences of resistance, was Aycock's concluding remarks.

Thom's Address.

A. P. Thom of the Southern, made concluding argument for the defense contending that the state had failed

(Continued on Page Three.)

AGENT GREEN RESIGNS HIS POSITION

(Continued From Page 1.)

to prove Agent Green guilty of selling the ticket in question and that the Southern was not guilty of any violation because the coupon issued with the ticket was an additional value to compensate the addtional charge. He reviewed the whole course of the Southern in the litigation to prevent the enforcement of the state rate act arguing that no other course was open to the in the exercise of proper regard for the interests of the people who had their money invested, of the interests of the people who must have facilities for travel and transportation of freight. The whole matter was, he insisted, being adjudicated in another court of competent jurisdiction. He appealed for the exercise of reason and the return of "not guilty" verdict.

When Judge Long came to impose sentence on the Southern he expressed the highest regard for the Federal courts and regretted that much had been said in this connection about "Conflict" between this court and a branch of the Federal court. The jurisdiction for violation if the rate act were clearly, he said, in the state court, hence his insistence to retain it. He regretted that the Southern had seen fit to go into the federal court before putting the rate in operation and seeking relief if it were needed in the State court. Other roads were observing the rate. Only the Southern and one other (The Atlantic Coast Line) were holding out.

He was confident if they had applied it and found it burdensome state authorities would have granted the relief. Conduct like that of the Southern in this case bred anarchy. The law must be enforced. No peace could come to the state until all this spirit was suppressed. He saw no sign of any intention of the Southern to do other than continue to violate the law. So it must take the consequences. Let the Judgment be the Southern pay a fine of $30,000 and costs. And let execution issue.

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curs that a local train which is required to do way work, switching, loading and unloading freight at the stations along the line is delayed so that it consumes more than its regular time for making its run, and in that case overtime has to be paid; while in the
344 case of a through train there is no occasion for such delay, for they have practically no work to do at stations, as they pass over the division and there is seldom any overtime because they do it easily in their regular time; but that it often happens that what are called "local trains" are several hours over their regular time, thus causing the payment of overtime. Affiant states, further, that the ability of the railroad company to load what is called "through trains" from the beginning to the end of the run depends on the amount of business to be carried on them, and that the expense and cost of running the train over the road is but a trifle more when the engine is loaded to its full capacity than when it is running light, and that trifle consists in the additional amount of fuel that is used and in the additional number of cars that pass over the track, thereby causing a little more wear and tear, and that they are of such insignificance compared with earnings of the train that they do not really amount to anything. Affiant states, further, that the wages paid engineers, firemen, conductors, and brakemen on through trains are somewhat less than are paid to the same men who are on trains that do a local business. Affiant states, further, that the principal thing to be considered by a railroad operator in conducting his traffic operations is in respect to the loading of his trains, and that the constant effort of all transportation men and operating men is to have full trains; by that is meant to have every locomotive loaded to its capacity in going over the line, and to have as few light trains as possible. Affiant states that on the through trains this is more likely to be able to be done than on local trains, which are rarely or never loaded to capacity, while the through trains are as a rule, loaded to capacity.

Affiant states, further, that while he has spoken of through
345 and local business, that on a railroad where a very large proportion of the through business is interstate and a very small proportion is state, and where a large proportion of the local business is state and only a very small proportion of the through business is state, in his opinion in such a case as that the cost of state business over interstate business would not be materially changed from the opinion given above in this affidavit; that is to say, in such a case, in his opinion, it generally costs at least two or three times as much to do the state business as it does to do the interstate business in the proportion of the earnings on the state business to the earnings on the through business. And further affiant saith not.

(Signed) A. J. EARLING.

Subscribed to and sworn before me by A. J. Earling, this 11th day of June, A. D. 1907.

(Signed) W. D. MILLARD,
Notary Public.

(Here follows Exhibit G, marked p. 346.)

347 EXHIBIT "H."

Filed in this office July 20, 1907. W. S. Hyams, Clerk.

Governor Glenn Rings Clear as a Bell.

Has Employed Governor Aycock, Speaker Justice and S. G. Ryan, Esq., to Prosecute.

Will Uphold State Law.

The Governor of North Carolina Has Written a Vigorous Letter to the Superior Court Judges in which he Clearly shows That the Injunction against the State Law Cannot stop the North Carolina Courts from Enforcing the Provisions of the Rate Law and punishing Violators of the Law.

Being asked by a Reporter what he thought of Judge Long's action in having the Railroads indicted for violating the rate law, the Governor replied, "I heartily approve his course. Acting under his oath to execute the law the Judge could not have done less." The Governor further stated that at the request of the solicitor he had decided to employ counsel to aid in the prosecution.

Continuing the Governor said: "Since the decision of Judge Pritchard, upon the rate question, I have myself carefully examined the law and feel that a great wrong has been done the State and in order that every phase of the law may be tested, have felt it my duty to send the following letter to every judge of the Superior Court of the State.

My dear Judge: The General Assembly of North Carolina, on the second day of March, 1907, passed an act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina—said act fixing the maximum rate at 2¼ cents per mile and going into effect from and after July 1st, 1907.

Before said act went into effect the Southern Railway Company and the Stockholders of the Atlantic Coast Line obtained from the Circuit Court of the United States, an injunction against the Corporation Commissioners and the Attorney General prohibiting them from putting said act into effect until after the final hearing in that Court before the Circuit Judge could render such a decree thus interfering with an act passed by the legislature of a sovereign State he would have to find that said act was unconstitutional by
348 reason of its being confiscatory of the railroad's property.

The Judge in this case did not declare the act unconstitutional but ordered a reference before the Master to find out if the rates fixed were confiscatory the very thing in my opinion that should have been done before any decree should or could be legally made restraining officers of the State from executing its laws. On examining the law as passed by the General Assembly I find in Section 1 these words:

"No Railroad Company doing business as a common carrier of passengers in North Carolina except as herein provided shall charge demand or receive for transporting any passenger etc., a rate in excess of the 2¼ cents per mile.

"In Section 4 of the same act it is further provided that 'Any agent servant or employee of any railroad company violating this act shall be guilty of a misdemeanor and upon conviction fined or imprisoned or both in the discretion of the Court.'

"The Act of the General Assembly required no action on the part of the Corporation Commission or Attorney General to give it vitality, or to put it into effect. It was self acting and on July 1st, 1907, became a law and no decree of a Circuit Judge of the United States enjoining the Corporation Commissioners and Attorney General could or did prevent its becoming a law. The law is therefore now in effect and the agents, servants and employees of the railroads, who since the first day of July have charged demanded and received a greater rate than 2¼ cents per mile have violated the plain letter of the law and are liable to indictment as well as the higher officials of the roads who advised and directed their agents so to act.

The decree of the Circuit Court of the United States did not pretend to enjoin the enforcement of the criminal violation of the rate law and I do not believe any judge after reading the case of Fitts *vs.* McGhee 172 U. *E.* Reports, page 172 and cases there cited will ever attempt to make so high handed an order, but will leave the criminal law to be enforced by trial, appeal, etc. as provided by the Constitution, both of the State and United States.

349 "As Executive officer of the State it is made my duty to see that the Criminal laws of the State are enforced. To do less is to violate my oath. The law is being violated every day. I therefore ask you as a Judge of the Superior Court of the State to properly instruct the grand jury and to direct the solicitor of your district to send bills against the agents and employees of the railroads or its higher officials thus openly acting in defiance of law.

"I do not desire unnecessarily to *mulch* the railroads in costs and expenses by sending a great number of indictments against them, but only enough to test in the State Courts every phase of the law to the end that the guilty parties may be punished. If the railroads had given this law a fair test (and many are) to see if they could live under its provi-ions without their property being confiscated, and had found that they could not, the people of our State are just, and as I told some of their leading officers, I would have promptly called a special session of the legislature to have remedied, but it is a serious thing for a railroad, before ever attempting to see if it could live under the law's provisions to rush into the Federal Court to seek to enjoin the bill of a sovereign State, as expressed by the General Assembly. I desire no conflict between the Federal and State authorities, and there will be none, if the plain letter of the decisions of the Supreme Court of the United States is observed, but as Governor of the State, I fe*l*l a great wrong is

being done the State, and therefore desire that in our own tribunal this law shall be fairly and fully tested. This can be done by indicting the violators of said law, and letting them come into Court making their defense thus raising the constitutionality of this act and the right of a federal Judge to abrogate it before first declaring it unconstitutional.

"As chief Executive of the State, I stand ready to aid you in every way possible in enforcing the law.

R. B. GLEN, *Governor.*

The Governor said he had no criticism to make, he was simply trying to enforce the law that he felt was being violated, and to this end had employed counsel to assist the solicitors in case they needed it. The Governor said he deeply regretted the condition things were in, but the action of the railroads left him no other alternative, but to do as he was doing, and that he took this action after carefully examining the law and having the approval of the Council of State.

350 *Statement of Case.*

Filed in this office July 22, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Western District of North Carolina, Sitting at Asheville.

In re Application of Jas. H. Wood for Writ of *Habeas Corpus.*

The petitioner, Jas. H. Wood, having heretofore filed a petition for a writ of *habeas corpus*, and the said writ having upon said petition been issued directed to Thomas F. Hunter, Sheriff of Buncombe County, North Carolina, now on July 19, 1907, the said Thomas F. Hunter produced the body of the said Jas. H. Wood into Court and made return to the said writ, and thereupon this cause was heard and continued from day to day until this day, July 22, 1907.

The said cause was heard upon the said application and the exhibits filed therewith, namely:

Exhibit A, which is the mittimus,

Exhibit B, which is the warrant,

Exhibit C, which is a copy of the bill in equity filed by the Southern Railway Company against Franklin McNeill and others in the Circuit Court of the United States for the Eastern District of North Carolina,

Exhibit D, which is a copy of an order entered in said cause on June 29, 1907; and

Exhibit E, which is a copy of the ancillary bill filed by the same complainant against the same defendants in the Circuit Court of the United States for the Western District of North Carolina;

All of which papers were read on the hearing.

351 There was also read upon the hearing a full transcript of the pleadings and proceedings in the said cause in the Circuit Court of the United States for the Eastern District of North

Carolina, and in the said cause in the Circuit Court of the United States for the Western District of North Carolina. Said papers and exhibits above mentioned, and said records, are now identified as a part of this record as fully as if now copied herein, also the coupon given to the prosecuting witness when the alleged sale was made, and the answer filed by def't on the hearing in the police Court.

There was also heard certain oral evidence, a transcript of which is attached hereto marked Exhibit F, which is filed of record and to be taken as a part hereof as fully as if inserted herein, and certain articles in certain papers filed as evidence, said Articles are marked Exhibits G. & H.

And the Court having heard argument of counsel, and being advised now on this July 22, 1907, filed herein its findings of law and fact which are as follows:

352 *Opinion. Pritchard, Judge.*

UNITED STATES OF AMERICA, *Western District of North Carolina:*

In the Circuit Court.

In re JAMES H. WOOD, Petitioner, on Writ of *Habeas Corpus.*

This is an application of the petitioner, Jas. H. Wood, to be discharged on a writ of *habeas corpus* from the custody of the Sheriff of Buncombe County.

The petitioner was indicted on a charge of having violated the provisions of section four of an Act passed at the session of the legislature of North Carolina of 1907, prescribing the maximum
353 charges railroad companies may make for transporting passengers in North Carolina, tried and convicted and sentenced to a term of thirty days' imprisonment to be worked upon the public roads of Buncombe County.

Some time since suits were instituted in the Circuit Court of the United States for the Eastern District of North Carolina by several railroad companies against the Corporation Commissioners of North Carolina, the Attorney General and the Assistant Attorney General of that State, for the purpose of obtaining protection of the Fourteenth Amendment to the Constitution of the United States against an Act of the legislature of North Carolina establishing maximum rates which such companies claimed to be confiscatory, and on a *prima facie* case, a motion was made for interlocutory injunctions. Accordingly, on the 29th of June, injunctions *pendente lite* were issued enjoining the defendants and all other persons from putting the rates into effect during the inquiry as to the constitutionality of the same, and from instituting prosecutions or attempting to impose penalties upon the companies, or their employees, for a failure to put into effect the statutory rates which are being contested. The court amply preserved the rights of the traveling public by requiring a coupon to be given to each purchaser evidencing the amount to be re-

funded to him in the event the rates should be upheld, and to secure the same ample bond and security were given. This was in accordance with the policy of the law of North Carolina where a rate made by the Commission is attacked. Thereupon the matter was referred to a master to ascertain the facts and report his conclusions, and, to avoid delay, he was required to make his report by the 25th of September, and the hearing was given for the first Monday in October, so as to give the parties opportunity to have the questions involved finally determined by the Supreme Court at the earliest possible moment.

There was nothing unusual in the proceedings. Similar suits have been instituted in the State of Alabama, where Judge Jones issued an injunction, and also in the State of Georgia, where Judge Newman pursued the same course.

Notwithstanding the United States Circuit Court had thus taken jurisdiction of the whole matter and was proceeding in an orderly way with its consideration, the evidence shows that the Governor of North Carolina has issued an address to the judges of the Superior Courts of the State, questioning the authority of the court to make the order referred to, and asking them to see that indictments against the agents and employees of the railroads and its officials be sent before the grand jury in order that the State may undertake the prosecutions which are enjoined in my order, and stating that, as chief executive of the state, he stands ready to aid them in enforce-
354 ing the law. In accordance with this policy, a number of indictments have been found and prosecutions begun in defiance of the order of injunction issued by the Court. If these prosecutions are permitted and continued, the result will be to nullify the injunction which was granted by the Court, and to practically defeat its jurisdiction. Not only are the rights of litigants involved, but the dignity and authority of the Circuit Court of the United States as well. These prosecutions and arrests taking place in widely separated portions of the State, present serious difficulties in the matter, and this court is confronted with open and avowed opposition by the powers of the State. Obstacles are being thrown in the way of inquiry by this court on writs of *habeas corpus* into the legality of arrests, and this seems to be the deliberate policy of those representing the State. The Court does not wish to be understood as imputing improper motives to the Governor or other State officials. The penalties prescribed by the State statute for charging more than the statutory rates are so enormous, that if permitted to be enforced they would practically bankrupt the railroad in an exceedingly brief time and before a final hearing could be had in the cause, and thus place the complainant in a position where it would be powerless to assert a right which is guaranteed to it by the Constitution of the United States.

If the criminal prosecutions against the agents, conductors, and employees are permitted to continue, the managers of the railroads cannot successfully operate their trains, carry the mails, or continue their usefulness as common carriers doing an interstate business.

The Constitution of North Carolina contains ample provision for the protection and preservation of the liberty of the citizen.

Article 1, Sec. 18, contains the following:

"Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed."

Section 21 of the same Article also provides:

"The privileges of the writ of *habeas corpus* shall not be suspended."

Section 1821 of the Revisal of North Carolina is as follows:

"Every person imprisoned or restrained of his liberty within this State, for any criminal or supposed criminal matter or on any pretense whatsoever, except in cases specified in the succeeding section, may prosecute a writ of *habeas corpus* according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom."

Section 1828 of the same chapter is the only law of which
355 the Court — any knowledge that imposes upon a judge a penalty for a failure to perform a judicial act. The section in question reads as follows:

"If any judge authorized by this chapter to grant writs of *habeas corpus* shall refuse to grant such writ when legally applied for, every such judge shall forfeit to the party aggrieved two thousand and five hundred dollars."

Thus it will be seen that the State Constitution of North Carolina as well as the statutory law, affords ample protection to every person who is deprived of his liberty without due process of law, and such being the case, it is remarkable that anyone representing the State should be opposed to the granting of the writ of *habeas corpus*.

Likewise, the Constitution of the United States and the Revised Statutes afford every citizen of the Union when imprisoned contrary to law, protection to the fullest extent by the writ of *habeas corpus*.

Article 1, Sec. 9, Cl. 2, of the Constitution of the United States is as follows:

"The privileges of the writ of *habeas corpus* shall not be suspended unless in cases of rebellion or invasion, the public safety may require it."

Section 751 of the Revised Statutes of the United States contains the following provisions:

"The Supreme Court and the Circuit and District Courts shall have power to issue writs of *habeas corpus*."

"The several justices and judges of the said courts, within their respective jurisdictions, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of restraint of liberty." (Revised Statutes, Sec. 752.)

"The court, or justice, or judge to whom such application is made shall forthwith award a writ of *habeas corpus*, unless it appears from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained." (Revised Statutes, Sec. 755.)

Notwithstanding the plain provisions and enactments contained

in the Constitution and Revised Statutes of the United States as well as the State Constitution and the statutes of the State, it is seriously contended that the agents of the complainant in this instance, when indicted for the violation of the statute (the enforcement of which has been restrained by this court), are not entitled to a remedy which is afforded to every other citizen of the State.

If this policy is to prevail in North Carolina, persons who
356 invest their money in enterprises like that of the complainant will be deprived of the means of protecting their property rights and denied the benefits of the writ of *habeas corpus* which is intended for the preservation of the liberty of every citizen.

It will be a sad day for the people of North Carolina when its citizens are prohibited by the acts of the legislature from asserting any rights guaranteed to them by the Constitution of the United States. Suits of this character have been brought in different states of the Union, and in every instance the Federal courts have proceeded to determine the questions involved without interference, hindrance or delay by the legislative or judicial authorities of such states.

The equal protection of the law is guaranteed to every citizen of the United States, and I shall employ all means within the power of the court to secure to persons who invoke the jurisdiction of this court such rights to the fullest extent of the law.

If the law is construed in a spirit of fairness and impartiality there can be no conflict of jurisdiction between the state courts and the Courts of the United States.

Much has been said in regard to the power of a court of equity to enjoin the prosecution of a criminal case. In the case of Dobbins *vs.* Los Angeles, 195 U. S. 241, Mr. Justice Day, who delivered the opinion of the court, in discussing this phase of the question, said:

"It is well settled that where property rights will be destroyed, unlawful interference by criminal proceedings, under a void law, or ordinance, may be reached and controlled by a decree of a court of equity. Davis and Foreman Mfg. Co. *vs.* Los Angeles, 189 U. S. 207-18, and cases there cited."

In this instance the Federal court has not been the aggressor, but has simply adopted the regular practice and procedure which has been approved by the Supreme Court of the United States in cases of a like nature, and while the court is not inclined to do anything that will produce an unseemly conflict, nevertheless, it is incumbent upon it to protect the rights of the parties to this controversy as well as maintain the dignity and authority of this court, and this cannot be accomplished without preserving to the fullest extent the jurisdiction of the court in determining the question which has been submitted to it for consideration.

If, in pursuing the usual and well defined practice and procedure in such cases with the sole view of maintaining the jurisdiction of this court at any stage of the proceeding, conflict must come, and I trust that it may not, I shall not evade the responsibility which is imposed upon me as the presiding officer of this court.

Much has been said about the sovereignty of the Statte. That

question does not arise in this controversy. This court
357 having assumed jurisdiction of the subject matter involved in the original suit, wherein the railroad companies are complainants and the railroad commissioners and others are defendants, the real question is, as to whether this court shall be denied full and complete jurisdiction of the subject matter at issue in that suit.

If the contention of the counsel representing the State be true, then, this court can be deprived of its jurisdiction by the multiplication of criminal prosecutions in the State courts against the complainant, its agents and employees to such an extent as to finally place it in a position where it will be deprived of a larger amount than that which is involved in the original controversy, and thus, by indirection the complainant will be denied a right which is guaranteed to it by the Constitution of the United States. This proposition is inconsistent with the well established rules of judicial procedure and does not commend itself to this or any court sitting as a court of equity. It excludes the idea of comity between the courts of concurrent jurisdiction.

Suppose complainant had instituted its suit in the State court instead of applying to this court, and that court had granted an injunction in pursuance of the laws of the State, could it be seriously contended that the State court, after having taken jurisdiction of the question involved in the civil action, thus instituted, would permit the complainant to be subjected to criminal prosecutions and suits for the recovery of the enormous penalties enumerated in the statute of the State, during the pendency of the action, and before there could be an ascertainment as to the rights of the parties to the original suit? The State Court, under such circumstances, would undoubtedly preserve the rights of the parties until the final hearing and any other course would be without precedent in the judicial history of the State. Notwithstanding this, we are confronted with an attempt on the part of those representing the State to do that, which, if successful, would render this court powerless to grant the same relief that would be granted as a matter of course in another court of concurrent jurisdiction.

The law provides that in all cases where the Federal courts have concurrent jurisdiction with the State courts, that such courts shall have power and authority to adjudicate any question that may come before such tribunals and to protect the rights of litigants to the same extent as that of the State courts.

The suits, out of which this controversy arose, were instituted in the same manner as other suits are instituted, and, involving as they do, the validity of a statute of North Carolina, it necessarily follows that all matters connected with the enforcement of such statute, during the pendency of that suit, are under the control and jurisdiction of the court wherein the questions involved are being litigated.
358 The court in the original suit having assumed jurisdiction of the questions at issue in that controversy and having entered a decree wherein, among other things, the complainant and its agents, were directed to employ certain means and do certain things in respect to the sale of tickets during the pendency of that

suit, the court thereby assumed control of, and dominion over, the management of the business of the complainant in so far as intrastate transportation is concerned in the same manner as if the court had appointed a receiver of the property of complainant.

As a general rule, the Circuit Courts of the United States will not issue the writ of *habeas corpus* in cases where persons are indicted and imprisoned in pursuance of a statute of a State, however it must be remembered, that this is not an attempt on the part of the State to enforce a law which has for its object the preservation of the peace, protection of the morals, or the general welfare of the public, and it cannot be insisted that these prosecutions are necessary to promote the welfare of the public in view of the fact that this court has amply protected the rights of those who may purchase tickets by requiring the complainant to give bond amply sufficient to secure the payment of any damages that may be sustained; but, on the other hand, is a penal statute, enacted with the sole view of enforcing obedience to the first section of the act which undertakes to fix maximum passenger rates. Therefore, inasmuch as the validity of the act which prescribes passenger rates is being contested, and the court has by injunction restrained the enforcement of the same, there is every reason why this court should exercise its discretion in granting writ of *habeas corpus*, when it is apparent that prosecutions of the complainant and its agents are being instituted solely for the purpose of deterring the complainant from prosecuting its original suit.

In view of this situation, the court is called upon to determine the question whether the petitioner is entitled to be discharged, inasmuch as it appears to the court that the act, on account of which he was indicted, was committed in pursuance of an order and decree of this court.

Section 753 of the Revised Statutes of the United States is as follows:

"The writ of *habeas corpus* shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled therein, in its custody for an act
359 done or omitted under any legal right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify."

The provisions of the foregoing section are so plain that there can be no doubt as to the true intent and meaning of the same. It is provided in express terms that the writ of *habeas corpus* shall extend to one who is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof.

In the case of State *vs.* Boone, 132 N. C. 1108, Chief Justice Clark,

who delivered the opinion of the court, in discussing the Neagle case, among other things, said:

"No such doctrine is found in Neagle's case (Neagle's case 135 U. S. 1), for it only holds that what the Federal Government enjoins as a duty, the State cannot punish as a crime."

This court by proper order, having directed that the complainant should provide a ticket with a coupon attached thereto representing the difference between the present rate and the proposed rate, it thereby became the duty of the company and its agents to strictly comply with the requirements of such order, and any failure on their part to observe the same would render them liable to an attachment for contempt, and under such circumstances, the duty being enjoined by this court, the performance of the same by the complainant and its agents would not render them liable to punishment under the statute of the State. Any attempt to punish the company or its agents for the observance of the order and decree of this court, would be in utter disregard of the comity which should exist between the State and Federal courts, as well as an absolute nullity.

If the State courts possess the power to indict persons acting under the directions of the Federal court for the performance of a duty enjoined upon them in a suit which may be brought in such court, then the power of the Circuit Courts of the United States would be completely paralyzed and such courts would be rendered unable to proceed to the determination of any question involving the validity of the statute of a State legislature.

While the court is of the opinion that the petitioner is entitled to be discharged, for the reasons hereinbefore stated, nevertheless, there is another phase of this question which should be considered, in order that there may be a proper determination of the matter in controversy, and in the consideration of which it is encumbent upon
360 the court to pass upon the validity of Section four of the act in question, which reads as follows:

"That any railroad company violating any provision of this act shall be liable to a penalty of five hundred dollars for each violation, payable to the person aggrieved by such violation, and recoverable in an action to be instituted in the name of said person in any court of this State having competent jurisdiction thereof. And any agent, servant, or employee of any railroad company violating this act shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court."

The foregoing section, among other things, provides that the company or its agents shall pay a penalty of five hundred dollars for each failure to comply with the requirements of the act.

It has been held that no State can constitutionally close the doors of the courts to a judicial inquiry into the constitutionality of the rates it fixes.

In the case of Railroad Company *vs.* Minn. 134 U. S. 456, it was held by the Supreme Court of Minnesota that the act in fixing rates was conclusive and there could be no inquiry into such rates by judicial tribunals. Accepting this construction of the Minnesota act by the Supreme Court of that State, the Supreme Court of the United

States declared the act unconstitutional, because it denies the railroad company a judicial investigation into the validity of the rates. If this cannot be accomplished directly, it cannot be done indirectly.

It is well settled that what cannot be done by express enactment cannot be done by device or indirection. Therefore, any system of penalties which is intended to have the effect and which is so framed as to have the effect of closing the doors of the courts to a judicial inquiry as to rates, is in consequence of that fact unconstitutional and void. Section four of the act in question clearly attempts to do this. It imposes upon the company as a penalty for an unsuccessful attempt to appeal to the court, no matter how *bona fide* this bill is made, such enormous fines and penalties in favor of individuals as to burden the challenger of the act in the courts so as to make it, if the penalties were valid, practically impossible for such an appeal to be made.

In the case of Cotting *vs.* Kansas Stock Yards Co., 183 U. S. 100, Mr. Justice Brewer, who delivered the opinion of the court, in discussing this phase of the question, said:

"It may be said that this is a penal statute, and therefore it is to be construed in favor of the delinquent, and that we have a right to expect that the State courts will construe the penalty as not attaching to the charge for each head of stock, but only to that upon the separate bunches shipped by different individuals. But is the lan-
361 guage so clear that there is no doubt as to the construction? Is there not enough in it to justify a construction which may be accepted by the trial courts and approved by the Supreme Court of the State, and the construction of a State statute by the Supreme Court of the State is in a case like this conclusive upon us. Must the party upon whom such a liability is threatened take the chances of the construction of a doubtful statute? If the one construction is placed upon it, then obviously, even accepting the largest estimate of value placed by any witness upon the property of the company, a single day's violation of the statute would exhaust such entire value in satisfaction of the penalties incurred. In this feature of the case we are brought face to face with a question which legislation of other states is presenting. Do the laws secure to an individual an equal protection when he is allowed to come into court and make his claim or defence subject to the condition that, upon failure to make good that claim or defence the penalty for such failure either appropriates all of his property, or subjects him to extravagant and unreasonable loss? Let us make some illustrations to suggest the scope of this thought.

"Suppose a law were passed that if any laboring man should bring or defend an action and fail in his claim or defence, either in whole or in part, he should in the one instance forfeit to the defendant half of the amount of his claim, and in the other be punished by a fine equal to half of the recovery against him, and that such law by its terms applied only to laboring men, would there be the slightest hesitation in holding that the laborer was denied the equal protection of the laws? The mere fact that the courts are open to hear his claim or defence is not sufficient, if upon him, and upon him alone, there is visited a substantial penalty for a failure

to make good his entire claim or defence. Take another illustration: Suppose a statute that every corporation failing to establish its entire claim, or make good its entire defence, should as a penalty therefor forfeit its corporate franchise, and that no penalty of any kind except the matter of costs was attached to like failures of other litigants, could it be said that the corporations received the equal protection of the laws? Take still another illustration: Suppose a law which, while opening the doors of the courts to all litigants, provided that a failure of any plaintiff or defendant to make good his entire claim or entire defence should subject him to a forfeiture of all his property or to some other great penalty; then, even, if, as all litigants were treated alike, it could be said that there was equal protection of the laws, would not such burden upon all be adjudged a denial of due process of law? Of course, these were extreme illustrations, and they serve only to illustrate the proposition that a statute (although in terms opening the doors of the courts to a particular litigant), which places upon him as a penalty for a failure to make good his claim or defence, a burden so great as to practically intimidate him from asserting that which he believes to be his rights is, when no such penalty is inflicted upon others, tantamount to a denial of the equal protection of the laws. It may be said that these illustrations are not pertinent because they are of civil actions, whereas this statute makes certain conduct by the stock yards company a criminal offence, and simply imposes punishment for such offense; that it is within the competency of the legislature to prescribe penalties for all offences, either those
362 existing at common law or those created by statute; and further, that although that the penalties herein imposed may be large, yet obedience to a statute like this can only be secured by large penalties; for otherwise the company, being wealthy and powerful, might defiantly disregard its mandates, trusting to the manifold chances of litigation to prevent any serious loss from disobedience. A penalty of a dollar on a large corporation, whose assets amount to millions, would not be very deterrent from disobedience. It is doubtless true that the State may impose penalties such as will tend to compel obedience to its mandates by all, individuals or corporations; and if extreme and cumulative penalties are imposed only after there has been a final determination of the validity of the statute, the question would be very different from that here presented. But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts, that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws."

The evidence shows that one case under this provision of the act has already been tried in the Superior Court of Wake county against the complainant as a corporation and one of its agents at that place. In that case the court imposed a fine of thirty thousand dollars against the company, and notified the agent that if he would stop selling tickets at a price that was authorized by the decree of

this court the judge would impose a nominal punishment, but if he did not, the court would not say what it would do until it had received an answer.

In making this reference the Court does not wish to be understood as criticising the State court, for there is no one in the State for whom the Court entertains a higher regard than Judge Long.

It is also shown by the uncontradicted evidence in this case that at least five thousand tickets are sold daily by complainant at its various offices in the State, in its intra-state business, thereby making it possible for it to be sued five thousand times in one day for penalties amounting to five hundred dollars in each instance on account of its failure to comply with the statute fixing passenger rates.

Thus it will be seen that by an enforcement of the statute judgments can be obtained against the complainant for the sum of two million and five hundred thousand dollars for each day. The aggregate penalties for which judgment could be obtained for one day would amount to a sum more than eight times as much as the sum involved in the original suit would be for one year.

This system of legislation is also condemned by Judge Lacombe, in the case of Consolidated Gas Co. *vs.* Mayer 146 Fed. Rep. 150, and the conclusion is irresistible, from what this distinguished jurist has to say that such a system of penalties is unconstitutional
363 and void. This not only applies to penalties in favor of individuals against the company, but also as to penalties against agents of the company which would render it utterly impossible for the company to carry on its business while having an orderly inquiry made by the courts as to its constitutional rights.

The Court is therefore of the opinion that the section of the act attempting to impose penalties and fines is unconstitutional and void upon its face *of the act*. For the reasons hereinafter stated, the petitioner will be discharged.

An order discharging the petitioners from the custody of the officers of the State court will be entered and a copy of the same will be certified to the Police Justice of the city of Asheville and the Sheriff of Buncombe county.

July 22, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

364 *Order.*

Filed in this Office July 22, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Western District of North Carolina, Sitting at Asheville.

In re Application of Jas. H. Wood for Writ of *Habeas Corpus.*

On this twenty-second day of July, 1907, came the parties in person and by their counsel, and this cause coming on to be heard upon the papers and proof as set forth in the order entered this day, and the Court having found the law and facts as set forth in an order

entered this day, the court finds that said petitioner is unlawfully restrained of his liberty, and it is therefore considered and ordered by the court that said Jas. H. Wood be discharged from the custody of Thomas F. Hunter, Sheriff of Buncombe County, North Carolina, as aforesaid, and that he go hence without day.

It is further ordered that the United States Marshal serve a copy of this order upon the said Sheriff of Buncombe County, North Carolina, and upon G. S. Reynolds, Police Justice of the City of Asheville, County of Buncombe, State of North Carolina.

J. C. PRITCHARD,
United States Circuit Judge.

Endorsed as follows: *In re* Jas. H. Wood. Original duplicate. Rec'd Jul- 22, '07. Executed Jul- 22, '07 as to G. S. Reynolds, July 25, '07. as to T. F. Hunter, Sheriff. J. M. Millikan, U. S. M. By R. S. Ramsey, D. M.
Fees $4.00.

365 *Petition for Appeal.*

U. S. Circuit Court. Filed Sept. 09, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Western District of North Carolina, Fourth Circuit, at Asheville.

In re Application of JAMES H. WOOD for a Writ of *Habeas Corpus.*

Thomas F. Hunter, Sheriff of Buncombe County State of North Carolina, by his Attorneys, Merrimon & Merrimon, feeling himself *agreed* by the order and judgment entered on the 22 day of July, 1907 in the above entitled proceeding, does hereby appeal from said order to the Supreme Court of the United States and prays that his appeal may be allowed and that a transcript of the record of proceedings and papers upon which said order is made duly authenticated may be sent to the Supreme Court of the United States.

MERRIMON & MERRIMON,
Attorneys for Thomas F. Hunter,
Sheriff of Buncombe County, Respondent.

366 *Assignment of Errors.*

U. S. Circuit Court. Filed Sept. 09, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Western District of North Carolina, Fourth Circuit, at Asheville.

In re Application of JAMES H. WOOD for Writ of *Habeas Corpus.*

Assignment of Errors on Appeal.

Thomas F. Hunter, Sheriff of Buncombe County, respondent, in connection with his petition for appeal, says that the decision in said cause is erroneous and against the just rights of the said respondent, and that in the record and proceedings there is manifest error in this to-wit:

1. The Court erred in assuming jurisdiction of the matter at issue.

2. The Court erred in admitting and considering evidence over the objections and exceptions of the respondent which was incompetent and not pertinent to the matter under investigation.

3. The Court erred in holding that it had enjoined the Southern Railway Company from putting into effect the rates for passengers required by an act of the General Assembly of North Carolina, Chapter 216, Public Laws 1907.

4. The Court erred in holding the fourth section of the said Act unconstitutional and void on its face and that, therefore, the arrest and conviction of the petitioner, Jas. H. Wood, for the violation thereof, is illegal and void.

5. For the Court erred in holding that the decree rendered by the Court in the cause of the Southern Railway against Franklin McNeill and others was fully operative and binding upon all persons, including State officials invested with the enforcement of the criminal laws of the State, and that said decree operated to prevent the
367 institution of any prosecutions for the violation of said Act of the General Assembly, and the prosecution of the petitioner, Jas. H. Wood, therefor.

6. The Court erred in holding that the Court had assumed control and dominion over the property of the Railway Company so far as intra-state business is concerned in the same manner as if the Court had appointed a receiver.

7. The Court erred in holding that the Act on account of which the petitioner, Wood was indicted and convicted, was committed in pursuance of an order or decree of the Circuit Court of the United States for the Western District of North Carolina.

8. The Court erred in refusing to discharge the writ and to remand the *petition of Wood* to the custody of the respondent.

9. The Court erred in rendering the decree discharging the petitioner Wood from the custody of the respondent as Sheriff of Buncombe County, North Carolina.

10. For other errors appearing upon the record. Wherefore the said Thomas F. Hunter, respondent, prays that said order or decree of said Court be reversed; that an order be entered remanding the

said James H. Wood to the cust dy of the respondent as Sheriff of Buncombe County North Carolina, to the end that said Hunter, as such Sheriff may perform the order and decree of the police Court of the City of Asheville, and for such other and further relief as may be proper in the premises.

MERRIMON & MERRIMON,
Attorneys for Respondent.

368 Know all Men by these Presents, That we, Thomas F. Hunter, Sheriff, Buncombe County, North Carolina, as principal, and The United States Fidelity & Guaranty Company of Baltimore, Maryland as sureties, are held and firmly bound unto James H. Wood in the full and just sum of One Thousand dollars, to be paid to the said *Thomas F. Hunter, Sheriff,* — certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of September, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a Term of the Circuit Court of the United States for the Western District of North Carolina in a suit depending in said Court, in the matter of the application of James H. Wood for a discharge from the custody of Thomas F. Hunter, Sheriff of Buncombe County, North Carolina under a Writ of *Habeas Corpus* a decree and order was rendered granting the writ and discharging the said Wood from custody and the said Thomas F. Hunter, Sheriff of Buncombe — North Carolina having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said James H. Wood petitioner in the said Writ citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof.

Now, the condition of the above obligation is such, That if the said Thomas F. Hunter Sheriff of Buncombe County, North Carolina shall prosecute this appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

T. F. HUNTER, [SEAL.]
Sheriff, Buncombe County.
THE UNITED STATES FIDELITY & GUARANTY CO., [SEAL.]
By ALF S. BARNARD, *Ag't & Att'y.*
THE UNITED STATES FIDELITY & GUARANTY CO.,
By P. R. MOALE, *Agent & Att'y in Fact.*

Sealed and delivered in presence of—
J. G. MERRIMON,
As to T. F. Hunter, Sheriff.

Approved by—
J. C. PRITCHARD,
U. S. Circuit Judge.

369 *Judge's Certificate.*

U. S. Circuit Court. Filed Sept. 09, 1907. W. S. Hyams, Clerk.

In the Circuit Court of the United States for the Western District of North Carolina, Fourth Circuit, at Asheville.

In re Application of JAMES H. WOOD for Writ of *Habeas Corpus.*

In this cause I hereby certify that the order discharging James H. Wood from the custody of Thos. F. Hunter, Sheriff of the County of Buncombe is based upon the grounds set forth in the opinion by me in said cause, which opinion is made a part of the record and will be certified and sent up as a part of the proceedings, together with this certificate.

I further certify that the jurisdiction of this Court is in issue as is shown by the record in the cause.

This 9th day of Sept. 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

370 U. S. Circuit Court. Filed Sep. 09, 1907. W. S. Hyams, Clerk.

UNITED STATES OF AMERICA, *ss:*

To James H. Wood, Greeting:

Whereas Thomas F. Hunter has lately appealed from the decree lately rendered in the Circuit Court of the United States, for the Western District of North Carolina, made in favor of you, the said James H. Wood, discharging you from the custody of the said Thomas F. Hunter, Sheriff of Buncombe County and has filed the security required by law; you are, therefore, hereby cited to appear before the said Supreme Court at the City of Washington on the 8 day of October, 1907 next to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the City of Asheville, in the Fourth Circuit, this the 9th day of September, in the year of our Lord one thousand nine hundred and seven.

J. C. PRITCHARD,
Judge of Circuit Court of the United States for the Fourth Circuit.

Service of the foregoing citation accepted this Sept. 9th, 1907.

MOORE & ROLLINS,
Of Counsel and Attorneys for Petitioner, Jas. H. Wood.

371 *Clerk's Certificate.*

THE UNITED STATES OF AMERICA,
Western District of North Carolina:

In the Circuit Court, at Asheville.

I, W. S. Hyams, Clerk of the Circuit Court of the United States for the Western District of North Carolina, Fourth Circuit at Asheville do certify that the foregoing is a full and true Transcript in the cause of the Application of James H. Wood for Writ of *Habeas Corpus*, as fully as the same remains on file and of record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said Court at Office in the City of Asheville on this the 19th, day of September, A. D. 1907.

[Seal United States Circuit Court, Western Dist. of N. C., at Asheville.]

W. S. HYAMS,
Clerk U. S. Circuit Court.

372 In the Circuit Court of the United States for the Western District of North Carolina, Fourth Circuit, at Asheville.

In the Matter of the Application of JAMES H. WOOD for *Habeas Corpus.*

I, W. S. Hyams, Clerk of the Circuit Court, do hereby certify that the Ancillary Bill in the case of Southern Railway Company against Franklin McNeill, Samuel L. Rogers, Eugene C. Beddingfield, Robert D. Gilmer, and Hayden Clement, J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Chas. A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, the last four being infants under the age of twenty-one years, and J. M. Way and B. C. Beckwith, defendants, which appears in the record of the above mentioned cause, as certified to the Supreme Court of the United States from this Court, was filed in the office of this Clerk on July 16, 1907; and on the same day there was filed with the said bill the following order:

"In the Circuit Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY, Complainant,
v.
FRANKLIN MCNEILL ET AL., Defendants.

373 "Upon reading the verified ancillary bill in this cause, and upon its being made to appear to the court that there is danger of irreparable injury to the complainant from delay unless the acts sought to be enjoined herein are restrained until a hearing upon the motion for an injunction in this cause, it is now ordered:

"1. That the defendants, Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, and their and each of their agents and employees be, and they hereby are, restrained and enjoined from preparing or publishing the tariff of rates, charges and tolls mentioned in the fifth section of the act in the bill in this cause mentioned, entitled, 'An Act to prevent unjust discrimination in freight rates and to fix the maximum charges therefor,' ratified March 9, 1907, and hereinafter referred to as 'Act in respect to freight rates,' and from classifying the railroads operating in North Carolina in accordance with,' and from publishing the rates fixed by, an act of the General Assembly of North Carolina, in the bill in this cause mentioned, entitled 'An Act prescribing the maximum charges railroad companies may make for transporting passengers in North Carolina,' ratified March 2, 1907, and hereinafter referred to as 'Act in respect to passenger rates,' and from taking any steps under or in pursuance of the said Act in respect to freight rates, or the said act in respect to passenger rates.

"2. That the defendants Franklin McNeill, Samuel L. Rogers, and Eugene C. Beddingfield, constituting the Corporation Commission of North Carolina, and each of them individually and jointly as constituting the said Corporation Commission of North Carolina, and each and all of their successors in office, their and each of their attorneys, agents and employees, and the defendants, Robert D. Gilmer, Attorney General, and Hayden Clement, Assistant Attorney General, their and each of their successors in office, their and each of their attorneys, agents and employees, and the defendants, J. A. Spence, Elijah Moffitt, J. R. McKenzie, E. B. Hatch, W. C. Hurley, F. A. Henley, W. M. Hooker, Charles A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Coon Howell, Henry Smitherman, Jesse Eldridge, Claude Howell, Wallace Armstrong, Guy Smitherman, J. M. Way and B. C. Beckweth, and each of them, their and each of their attorneys, agents and employees, are, and each of them is, hereby restrained and enjoined from instituting, prosecuting, or further prosecuting, and from permitting or authorizing to be instituted, prosecuted, or further prose-

cuted, any suit or prosecution, and from proceeding, either civilly or criminally, against the complainant, or against any officer, agent or employee of the complainant, for the recovery or imposition of any penalty or punishment under or by virtue of said Act in respect to freight rates or said Act in respect to passenger rates, or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of said complainant or any of its officers, agents or employees, to put into effect or to observe on any of the lines of the complainant in North Carolina the freight rates or the pas-
374 senger rates prescribed in said acts, or in either of them, or to comply with any of the provisions of any of said acts, or for the recovery of any damages or overcharges because of, or growing out of, any such failure, or for the enforcement of any claim, alleged right, or cause of action, growing out of, or connected with, any such failure.

"3. That all other individuals, persons and corporations are, and each of them is, hereby restrained and enjoined from instituting, prosecuting, or further prosecuting, and from permitting or authorizing to be instituted, prosecuted or further prosecuted any suit or prosecution or other proceeding, either civil or criminal, against said complainant, or against any officer, agent or employee of said complainant, for the recovery of any damages or overcharges, or for the recovery or imposition of any penalty, or punishment, under or by virtue of said Act in respect to freight rates, or said Act in respect to passenger rates, or under or by virtue of any law of North Carolina, because of, or growing out of, the failure of said complainant or any of its officers, agents or employees, to put into effect or to observe on any of the lines of the complainant in North Carolina the freight rates or the passenger rates prescribed in said acts, or to comply with any of the provisions of either of said acts.

"4. That the defendants, and each of them, show cause before this court in the United States court room at Asheville, North Carolina, at ten o'clock, A. M., on twelfth (12) day of August, 1907, why an injunction *pendente lite* as prayed in the bill should not be issued, and that a copy of this order be served as soon as practicable upon each of the defendants.

"5. That this restraining order shall be in force and effect from the date hereof and until the determination of the complainant's motion for an interlocutory injunction herein.

J. C. PRITCHARD,
United States Circuit Judge.

This July 16th, 1907."

and on that day copies of said ancillary bill and order were issued from this office, and on July 20, 1907, the said ancillary bill, and the restraining order issued thereon, was delivered to J. M. Millikan, United States Marshal for the Western District of North Carolina, and by the said J. M. Millikan served on J. A. Spence and
375 others, as shown by his return, which is as follows:

"Received July 20th 1907, Executed July 20th, 1907, by leaving a copy of within each J. A. Spence, Elijah Moffitt, E. B. Hatch, F. A. Henley, W. M. Hooker, and J. M. Way and by leaving copy with each on July 22 J. R. McKinzie, W. C. Hurley, Chas. A. Armstrong, L. F. Nance, Spencer Howell, Robert Howell, Guy Smitherman, Coon Howell, Henry Smitherman, Jesse Eldridge, Claud Howell and Wallace Armstrong.

J. M. MILLIKAN,
U. S. Marshal,
Per J. M. ALLEN,
Deputy Marshal.

Fees $36.00.

"Received July 29, 1907,
"Executed July 29, by delivering copy of within to Hayden Clement.

J. M. MILLIKAN,
U. S. Marshal,
By R. S. RAMSEY, *D. M.*

Fees 2.00;"

and on July 29, 1907, a copy of said bill and order directed to Hayden Clement was delivered to the said J. M. Millikan, United States Marshal, and was on said date, to-wit, July 29, 1907, served by delivering a copy of the same to Hayden Clement.

In witness whereof, I have hereunto set my hand and the seal of my said office in the City of Asheville, this the 26th day of November, 1907.

[Seal United States Circuit Court, Western Dist. of N. C., at Asheville.]

W. S. HYAMS,
Clerk U. S. Circuit Court.

376 In the Supreme Court of the United States.

No. 474, October Term, 1907.

THOMAS F. HUNTER, Sheriff, Etc., Appellant,
v.
JAMES H. WOOD, Appellee.

In this cause it is agreed that the records of the United States Circuit Court show that on July 16, 1907, the ancillary bill which appears in the record sent by the United States Circuit Court to the Supreme Court of the United States was duly filed in said Circuit Court of the United States for the Western District of North Carolina; and that on said day a restraining order was signed by his Honor, Jeter C. Pritchard, United States Circuit Judge, and duly filed in the office of the Clerk of said Court, and that a copy of said restraining order is set out in the certificate of the Clerk hereto at-

tached; and it is agreed by and between W. B. Rodman and Charles A. Moore and Thomas S. Rollins, attorneys representing the petitioner, and James H. Merrimon and J. G. Merrimon, attorneys representing the respondents, that the record in the United States Supreme Court shall be amended so as to show that the said ancillary bill was filed in the Circuit Court of the United States in and for the Western District of North Carolina, on July 16, 1907, and
377 that the restraining order set out in the certificate of the Clerk hereto attached was on said day duly filed; and that this agreement shall be filed with the Clerk of the Supreme Court of the United States and become a part of the record in said cause.

This the 26th day of November, 1907.

W. B. RODMAN,
CHAS. A. MOORE,
THOMAS S. ROLLINS,
Attorneys for the Appellee.
J. H. MERRIMON,
J. G. MERRIMON,
Attorneys for the Appellant.

378 [Endorsed:] File No. 20,877 Supreme Court U. S. October Term, 1907. Term No. 474 Thomas F. Hunter, Sheriff &c., *vs.* James H. Wood. Stipulation of counsel amending transcript of record. Filed Nov. 29th, 1907.

Endorsed on cover: File No. 20,877. W. North Carolina C. C. U. S. Term No. 474. Thomas F. Hunter, sheriff of Buncombe county, State of North Carolina, appellant, *vs.* James H. Wood. Filed October 5th, 1907. File No. 20,877.

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1907.

THOMAS F. HUNTER, Sheriff of Buncombe County, State of North Carolina,
Appellant,

vs.

JAMES H. WOOD,
Appellee.

No. 474.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

Motion to Advance.

And now comes the Appellee in the above-entitled cause and upon the record therein in this Court, moves the Court that said cause be advanced and set down for hearing at the earliest convenient day of the present Term.

Statement of the Matter Involved,

The Southern Railway Company instituted a suit in equity in the Circuit Court of the United States for the Eastern District of North Carolina against Franklin McNeill and others, officers of the State of North

Carolina, to prevent the execution of two statutes of the State of North Carolina, one directing the reduction of intra-state passenger rates and the other directing the reduction of intra-state freight rates, and as ground for such relief averred that each of the statutes was repugnant to the Constitution of the United States. An order was made enjoining defendants and all other persons, until the further order of the Court, from enforcing either of the statutes, and prescribing and directing the manner in which the Railway Company and its employes should charge and make record of rates in excess of those fixed by the statutes.

Appellee, an employe of the Railway Company, was tried, convicted and sentenced to imprisonment by a court of North Carolina on the charge of selling tickets, (while the order of injunction was in effect), at a greater rate than the rate prescribed by one of the statutes. The court below, in pursuance of a writ of *habeas corpus* issued by it and addressed to appellant as the sheriff of Buncombe County, North Carolina, released appellee from imprisonment upon the ground that the act for which appellee was in custody had been done in pursuance of the order of injunction in the suit of Southern Railway Company against McNeill and others.

This case is an appeal from the order discharging appellee from custody and involves the claim that the suit of Southern Railway Company against McNeill is a suit against the State of North Carolina, and that therefore the order of injunction was void, and the further claim that the enforcement of the criminal statutes of North Carolina cannot be interfered with by the courts of the United States.

Reasons for This Application.

The questions involved are of great public importance at this time. Similar questions are involved in suits now pending in several of the Circuit Courts of

the United States. Serious conflicts of jurisdiction and authority between the courts of the United States and the executive and judicial departments of some of the States have recently been imminent on account of diverse views upon these questions. Additional statutes have just been passed in some of the States which probably will lead to further controversies of this character.

There is now pending in this Court the proceeding entitled "In the Matter of Edward T. Young, Petitioner," No. 10 original, which involves questions similar in many respects to the questions involved herein, and which is to be argued in the next few days. It is believed that the court in considering the questions involved in that proceeding will be greatly assisted by having before it at the same time the statutory conditions and the facts disclosed by the record herein.

Washington, D. C., Dec. 2, 1907.

ALFRED P. THOM,
WALKER D. HINES,
Of Counsel for Appellee.

DEC 18 1907
JAMES H. McKENNE
CLE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

NO. 474.

THOMAS F. HUNTER, SHERIFF OF BUNCOMBE COUNTY, NORTH CAROLINA,

versus

JAMES H. WOOD.

BRIEF IN BEHALF OF APPELLANT

E. J. JUSTICE,
Attorney for Appellant.

Edwards and Broughton Printing Co., Raleigh.

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In the Supreme Court of the United States,

OCTOBER TERM, 1907.

No._____

THOMAS F. HUNTER, SHERIFF OF BUNCOMBE COUNTY, NORTH CAROLINA,

versus

JAMES H. WOOD.

BRIEF IN BEHALF OF APPELLANT.

STATEMENT OF FACTS.

The General Assembly of North Carolina, at its regular session in 1907, passed an act fixing the maximum passenger fares, to be charged by certain railroad companies in North Carolina, on intra-state transportation.

The act was ratified March 2, 1907, and became operative on July 1, 1907, and is now Chapter 216 of the Public Laws of North Carolina, session 1907.

The full text of the act is as follows:

CHAPTER 216.

AN ACT PRESCRIBING THE MAXIMUM CHARGES RAILROAD COMPANIES MAY MAKE FOR TRANSPORTING PASSENGERS IN NORTH CAROLINA.

The General Assembly of North Carolina do enact:

SECTION 1. That no railroad company doing business as a common carrier of passengers in the State of North Carolina, except as hereinafter provided, shall charge, demand or receive for transporting any passenger, and his or her baggage not exceeding in weight two hundred pounds, from any station on its railroad in North Carolina, a rate in excess of two and one-

quarter centsquarter cents per mile, and for transporting children twelve years of age or under, one-half of the rate above prescribed. *Provided,* that the Corporation Commission of North Carolina is hereby authorized and empowered to permit all independently owned and operated railroad companies in North Carolina, whose mileage of road in said State is sixty miles or under, to charge a rate for transporting passengers not in excess of the present rate fixed and prescribed for said road; and also to permit all railroads constructed within the twelve months preceding the first day of January, one thousand nine hundred and seven, or at that time in course of construction, for a term of two years from and after July first, one thousand nine hundred and seven, and also such railroads as may be constructed within two years from January the first, one thousand nine hundred and seven, to charge such rate in excess of the rate above prescribed as the said Commission may determine to be reasonable. A charge of ten cents may be added to the fare of any passenger when the same is paid upon the cars if a ticket might have been procured within a reasonable time before the departure of the train; and no railroad company shall be required to accept a single fare of less than five cents.

Sec. 2. In the case that any railroad company operating as a common carrier of passengers in the State of North Carolina is owned, controlled or operated by lease or other agreement by any other railroad company doing business in said State, the rate for carrying passengers thereon as prescribed by this act shall be determined for said railroad by the rate prescribed by this act for the railroad company which owns, controls or operates the same; and the North Carolina Corporation Commission shall publish the rates fixed by this act for the several railroad companies operating in this State, on or before the first day of June, one thousand nine hundred and seven.

Sec. 3. That mileage-books of one thousand miles in each book shall be kept on sale at such railroad ticket office in North Carolina as shall be named and designated by the Corporation Commission of North Carolina, and when such mileage-book is purchased it shall be good in the hands of any person or persons named therein on all railroads on which the fare is the same as or less than the fare on the roads of the company selling such mileage-book; and when the mileage is detached from said book by any other railroad company than the one which sold it, the said mileage shall be redeemable on demand by the railroad company which sold it.

Sec. 4. That any railroad company violating any provision of this act shall be liable to a penalty of five hundred dollars, for

each violation, payable to the person aggrieved by such vioaltion, and recoverable in an action to be instituted in the name of said person in any court of this State having competent jurisdiction thereof. And any agent, servant or employee of any railroad company violating this act shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the Court.

SEC. 5. That any person or persons, except those permitted by law, who accept free transportation, shall be guilty of a misdemeanor and, upon conviction shall be fined or imprisoned, or both, in the discretion of the Court.

SEC. 6. That section two thousand six hundred and eighteen of the Revisal of one thousand nine hundred and five is hereby repealed, and all laws and clauses of laws in conflict with this act are hereby repealed.

SEC. 7. That this act shall be in force from and after July first, one thousand nine hundred and seven.

In the General Assembly read three times, and ratified this the 2d day of March, A. D. 1907.

On May the 8th, 1907, the Southern Railway Company, a common carrier of freight and passengers, in North Carolina, being one of the companies affected by the maximum passenger rate fixed by the act referred to, filed a bill in equity in the Circuit Court of the United States, for the Eastern District of North Carolina, on behalf of itself as complainant, against the three Corporation Commissioners, and the Attorney General, and Assistant Attorney General, of the State of North Carolina, as defendants, with the purpose of preventing the maximum rates of two and one-quarter cents becoming effective, and on that day his Honor, J. C. Pritchard, United States Circuit Judge, issued a temporary restraining order, and required the persons named as defendants, to appear before him, on the 26th day of June, 1907, to show cause why an injunction should not be issued.

The defendants appeared, in response to the notice, and challenged the jurisdiction of the United States Circuit Court to entertain the suit against them.

After a hearing, the Court not having found the rate fixed was confiscatory, or that the act appeared to be unconstitutional for any reason, on June the 29th, 1907, granted an interlocutory injunction, and referred the suit to a Master.

Prior to the taking of testimony by the Master, but after the first day of July, 1907, the appellee, James H. Wood, the ticket agent of the Southern Railway Company, sold a passenger ticket over the said Railway Company's line, from one point in the State of North Carolina, to another point within that State, and demanded and received therefor, more than two and one-quarter cents per mile. Wood was, upon a warrant issued by a Police Court of the State of North Carolina, having jurisdiction to try persons for misdemeanors, arrested, tried and sentenced; and was in custody of the Sheriff of Buncombe County, North Carolina, by virtue of that sentence, when his Honor, J. C. Pritchard, United States Circuit Judge, issued a writ of *habeas corpus,* and had the prisoner brought before him, by the said State officer, and after a hearing discharged Wood from custody; and from that order, Thomas F. Hunter, the Sheriff, appealed to this Court.

The Constitution of the State of North Carolina provides, with reference to the duties of the Attorney-General, as follows:

ARTICLE III.

SECTION 1. The Executive Department shall consist of a Governor, in whom shall be vested the supreme executive power of the State, a Lieutenant-Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, and an Attorney-General, who shall be elected for a term of four years by the qualified electors of the State, at the same time and places and in the same manner as members of the General Assembly are elected.

ARTICLE III.

SEC. 13. The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction and Attorney-General shall be prescribed by law.

ARTICLE III.

SEC. 14. The Secretary of State, Auditor, Treasurer and Superintendent of Public Instruction shall constitute, *ex-officio,* the Council of State, who shall advise the Governor in the execution of his office, and three of whom shall constitute a quorum. Their advice and proceedings in this capacity shall be entered in a journal to be kept for this purpose exclusively, and signed by the members present, from any part of which any member may enter his dissent; and such journal shall be placed before the

General Assembly when called for by either House. The Attorney-General shall be, *ex officio*, the legal adviser of the Executive Department.

The duties of the Attorney-General as provided by the statute are, generally, such as are prescribed for Attorneys-General of the various States of the Union.

Particular sections of Revisal of North Carolina are referred to by the Southern Railway Company in the proceedings in the suit in equity, for the purpose of undertaking to show that ministerial and particular duties were imposed upon the Corporation Commission and the Attorney-General, relative to the enforcement of the Act of 1907, fixing maximum passenger fares.

These particular sections are:

Section 2567, which gives to the railroad companies power to carry persons and property, and to regulate the time and manner of doing so, and fix the compensation therefor.

Section 2618, which provides for two classes of passengers.

Section 1099, which confers power upon the Commission to fix reasonable and just freight and passenger rates and charges for service there specified, and to otherwise regulate railroads.

Section 1104, which prescribes what shall be done by the Commission when it fixes maximum rates.

Section 1106, which provides for the revising of rates fixed by the Commission.

Section 1109, which provides that the Commission may require publication of rates for the convenience of the public.

Section 1112, which provides that the schedule of rates fixed by the Commission shall be *prima facie* evidence, etc.

Section 1078, sub-section 4, which provides that the rates when fixed by the Commission may be appealed from to the State courts, and providing that the railroad company appealing may have the rates fixed by the Commission, vacated pending appeal, by giving bond.

Section 1078, sub-section 5, which provides for injunction by a Judge during the pendency of an appeal from the order of the Commission.

Section 1086, which provides that any railroad company violating the rules of the Commission, and not making recompense for the wrong done, within thirty days, etc., shall be subject to penalty.

Section 1087, which provides for the railroad company violating any provision of chapter 20 of the Revisal, or any of the

orders of the Commission, shall be subjected to a penalty in addition to those already prescribed.

Section 1092, which provides that any suit for penalty prescribed by said chapter shall be instituted in the name of the State, on relation of the Corporation Commission, etc., and such action shall be prosecuted by the Attorney-General, or a Solicitor.

Section 1066, which gives the Corporation Commission general control over railroads.

Section 1113, which provides that whenever any corporation has violated the law, the Commission shall, if the Corporation does not desist upon notice, present the matter to the Attorney-General, who shall take such proceedings thereon as he shall deem expedient.

Section 5380, which prescribes the general duties of the Attorney-General.

This section is as follows:

"It shall be the duty of the Attorney-General—

1. To defend all actions in the Supreme Court, in which the State shall be interested, or is a party; and also when requested by the Governor, or either branch of the General Assembly, to appear for the State in any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested.

2. At the request of the Governor, Secretary of State, Treasurer, Auditor, Corporation Commissioners, Insurance Commissioner, or Superintendent of Public Instruction, he shall prosecute and defend all suits relating to matters connected with their departments.

3. To represent all State institutions, including the State's Prison, whenever requested so to do by the official head of any such institution.

4. To consult with and advise the Solicitors, when requested by them, in all matters pertaining to the duties of their office.

5. To give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer.

6. To pay all moneys received for debts due or penalties to the State immediately after the receipt thereof into the treasury.

For the purpose of explanation of a decision of the Supreme Court of North Carolina, the facts are given of a case arising

under chapter 216, Public Laws of 1907, decided since this appeal was taken. These do not appear from the record in this case, but do appear in the opinion of the Supreme Court of the State in the case referred to.

The Solicitor for one of the Judicial Districts of North Carolina sent a bill of indictment before the Grand Jury of the Superior Court of Wake County, against the Southern Railway Company, and one of its agents, for selling tickets at a greater rate than two and one-quarter cents per mile, in violation of the statute.

A true bill was found, and the defendants were both convicted, and upon the trial Court fining the railway company it appealed to the Supreme Court of the State. The Supreme Court held, that under the statute the corporation was not indictable, and arrested the judgment. Upon the trial of that case in the Superior Court of the State the Railway Company challenged the jurisdiction of the State Court upon the ground that there was pending in the Circuit Court of the United States the equity suit already referred to herein, and a complete copy of the transcript of the record in the equity suit was introduced to support the plea to the jurisdiction of the State Court.

While the Supreme Court of the State arrested the judgment upon the ground stated, it felt called upon to decide, and did decide, the question of jurisdiction, and also construed the statute, chapter 216 of the Acts of 1907.

The full text of the opinion of the Court in that case will be filed with the Court, but I quote the following from it:

"The act provides (Public Act of 1907, chap. 216, sec. 7), that it shall be in force from and after July 1, 1907, and the provision that the Corporation Commission is required to publish the rates 'fixed by the act' on or before June 1, 1907, for the information of the public and the railroads concerned is directory, and was not intended to stay the operation of the act beyond July 1, 1907, should the Commission fail in the performance of that duty, nor in law, by any reasonable construction of the act, does it have any such effect. The maximum rate prescribed by the act was unconditionally effective from and after July 1, 1907, and the act was therefore self-executing. For this reason alone, if for no other, the suit in equity pending in the United

States Circuit Court can not be permitted to affect the proceedings in the court below in this case."

There is involved in the suit in equity entitled *The Southern Railway Company v. McNeill et al., Corporation Commission and Attorney-General,* the validity of an act fixing certain freight rates and which the complainant says will, if enforced, cause an annual loss to it of twenty thousand dollars.

That act is framed upon different ideas from those upon which the passenger rate law is based.

The one in no way relates to the other. The freight rate law imposes special duties upon the Corporation Commission, but as it in no way effects the duties of the members of the Corporation Commission, and the Attorney-General, with reference to the Passenger Rate Act, it need not be referred to further

ARGUMENT.

There can be no question about the authority of the State, through its Legislature, to fix maximum passenger rates upon the intra-state passenger business done within its boundaries. I do not understand that this power is questioned, but if it be it is sufficient to quote from the opinion of the Supreme Court of the United States, delivered by Mr. Justice Brewer, in *Chicago and G. T. R. Co. v. Wellman,* the following:

"If the contention be that the Legislature has no power in the matter, and that an act fixing rates, however high they may be, is necessarily unconstitutional, it is enough to refer to the long series of cases in this court in which the contrary has been decided. The Legislature has power to fix rates, and the extent of judicial interference is protection against unreasonable rates."

Stone v. Farmers L. & T. Co., 116 U. S., 307.
Chicago M. & St. P. R. Co. v. Minnesota, 134 U. S., 418.

It is equally well settled that the State, in the exercise of its police power, may, by legislative enactment, constitute it a criminal offense for an agent of a common carrier, or public service

corporation, to sell tickets at a rate in excess of that allowed by law.

Fitts v. McGhee, 172 U. S., 416.

There can be no ground for the contention that the ticket agent, Wood, the appellee, was not rightfully arrested and held in custody by the Sheriff of Buncombe County, the appellant, under the warrant and sentence of the Court of the State of North Carolina, except that all indictments of and proceedings against, agents of the Southern Railway Company, for selling tickets at over 2¼ cents were illegal, that State Courts of North Carolina were without jurisdiction, for the reason that there was pending in the Circuit Court of the United States a suit in equity, in which the Southern Railway Company was complainant and the members of the North Carolina Corporation Commission, the Attorney-General and the Assistant Attorney-General of the State of North Carolina were defendants, and that at the instance of the complainant there was issued in that suit an injunction against the maximum rate of 2¼ cents becoming effective.

THE SUIT IN EQUITY AGAINST THE MEMBERS OF THE NORTH CAROLINA CORPORATION COMMISSION, FRANKLIN McNEILL, S. L. ROGERS, AND E. C. BEDDINGFIELD, IS, IN SO FAR AS IT RELATES TO THE PASSENGER RATES, A NULLITY, AND DOES NOT HELP THE JURISDICTION OF THE CIRCUIT COURT OF THE UNITED STATES.

Section 1 of the passenger rate act makes it unlawful for railway companies falling within the class mentioned in that section to sell passenger tickets from any station on its road in North Carolina, to any other station on its road in North Carolina, at a rate in excess of 2 1-4 cents per mile. It is provided in section 2 of the act that the Corporation Commission shall publish the rates fixed by the act for the several railroad companies operating in the State, on or before the first day of June, one thousand nine hundred and seven. The Southern Railway

Company falls within the class of railway companies which are not allowed to charge more than 2 1-4 cents per mile.

The Supreme Court of North Carolina has decided, in the case of *State v. Southern Railway Company*, printed copies of the opinion being filed with this court, that the North Carolina passenger rate Act of 1907 is self-executing, and became operative on the first day of July, 1907, and that the provision of the act that the Corporation Commission should publish the rates fixed by the act, was directory merely, and that the act becoming effective, in no way depended upon the Corporation Commission's complying with the direction to publish the rates. This construction of the Supreme Court of the State is manifestly the only one the act is susceptible of.

It was sought by the appellee, Wood, upon the return to the writ of *habeas corpus* issued by the Circuit Judge, to show that certain other acts of the Legislature of North Carolina gave to the Corporation Commission the power to fix rates, and made it its duty, to impose penalties upon railroad companies for a failure to comply with certain laws of the State of North Carolina, and orders of the Corporation Commission, and made it the duty of the Commission and the Attorney General, under certain circumstances, to enforce the penalties. It was sought to construe these various statutes, together with chapter 216 of the Acts of 1907—the passenger rate Act—presumably for the purpose of showing that duties were imposed upon the members of the North Carolina Corporation Commission and the Attorney General, ministerial in their character, and which, if carried out, would constitute a trespass upon, and an infringement on, the constitutional rights of the Southern Railway Company. This argument seems to have had some influence upon the Circuit Judge, but an examination of it shows that it is wholly fallacious.

The passenger rate Act of one thousand nine hundred and seven stands alone, in so far as it has reference to the maximum passenger rate of 2 1-4 cents upon the class of railroad companies to which the Southern Railway Company belongs. The only penalties prescribed which were intended by the Legislature to be enforceable are those specified in section 4 of the act.

The argument advanced by the appellee, and the idea which

must have influenced the Circuit Judge in granting the injunction, by which it was inteded to keep the maximum passenger rates on the Southern Railway Company at more than 2 1-4, that the Corporation Commission still had the right to fix the passenger rates notwithstanding the act of 1907, does not affect this case, even if the argument is sound, which it is earnestly insisted it is not, unless the Corporation Commission had the power to fix the maximum passenger rates on the Southern Railway Company, and other railroad companies belonging to its class, *at more than* 2 1-4 *cents per mile.*

If it could be successfully contended, and it is earnestly insisted that it can not be, that the passenger rate on the Southern Railway Company might be fixed, notwithstanding the passenger rate Act of 1907, at less than 2 1-4 cents per mile, it seems to be perfectly clear that certainly no power is left to the Corporation Commission to fix the rate on the Southern Railway Company and other railroad companies classified with it by the act, at more than 2 1-4 cents per mile.

Certainly the Attorney General had no right to fix the rates, and it is not suggested that he had any such power.

If the defendants in the equity suit brought by the Southern *Railway Company v. Franklin McNeill,* S. L. Rogers and E. C. Beddingfield, Corporation Commissioners, and the Attorney-General and Assistant Attorney, had no power, if they had willed to do so, to fix the rates above 2 1-2 cents, does it not follow as the night follows the day, and is it not a perfectly patent proposition that the Circuit Court of the United States could not, by an injunction against them, put the rates higher than they had the power to put them?

If the Circuit Court of the United States did not have the power to make an order without any suit pending before it,—and of course, in the very nature of things, it could have no such power,—then upon what principle or theory could it acquire this power, by virtue of a suit pending in the Court in which the defendants not only did not claim, but could not successfully claim, or assert the power to fix the rate *at more than* 2 1-4 *cents?*

Before the Circuit Court of the United States can lawfully issue an injunction affecting the rates fixed by the Legislature

of North Carolina, it must have before it as parties to a suit those who could themselves fix the rate.

This is not a suit, the purpose of which is to enjoin the defendants from enforcing penalties merely, but it has a more far-reaching purpose, to-wit: change of legislative rates by a decree of court.

To enjoin the enforcement of penalties against the railroad companies in a suit against those who have the power to and are threatening to enforce such pealties, is one thing, but to undertake to justify the suit upon this ground, and then go further and raise the rates, is quite another thing.

It is earnestly insisted that the suit in equity, in so far as it was thereby attempted to affect the passenger rates, fails for lack of jurisdiction of the Circuit Court of the United States;

First. Because the passenger rate act of one thousand nine hundred and seven is self-executing, and the penalties there prescribed are the only penalties which can be enforced, and that these can not be enforced at the instance of, or by the defendants in the suit, unless by the Attorney-General in the exercise of his executive discretion, and this point will be discussed later.

Second. That if the power to enforce the penalties in that suit existed in the defendants, they have not the power to raise the rates, and the purpose of the suit is by means of an injunction, to raise the rate above what is lawful.

It will be observed also, that the Circuit Court of the United States issued its injunction without finding that the rate was confiscatory. The Circuit Court has, by its decree, undertaken to suspend the operation of an act which has never been declared even *prima facia* in conflict with the organic law of the land.

The proposition presented by the ruling of the Circuit Court is not whether the Court can declare unconstitutional an act of the Legislature of North Carolina, but whether it can suspend the operation of an act presumably constitutional and valid.

The point which I have undertaken to make in this case has the support of this Court.

In the case of *St. Louis and S. F. R. Co. v. Gill*, 156 U. S., 666, it was said:

"Sometimes in acting on this subject the State Legislatures have created commissions or boards of public works with power to establish rates for the transportation of passengers and freights, and in such instances the course recommended by Mr. Jutice Miller may well be followed; that the remedy for a tariff alleged to be unreasonable should be sought in a bill of equity or some equivalent proceeding wherein the rights of the public as well as those of the company complaining can be protected. But there are other cases and the present is one, where the Legislatures choose to act directly on the subject by themselves establishing a tariff of rates and prescribing penalties. In such cases there is no opportunity to resort to a compendious remedy such as a bill in equity, because there is no public functionary or commission which could be made to respond, and, therefore, if the companies are to have any relief it must be found in the right to raise the question of reasonableness of the statutory rates by way of defense to an action for the collection of penalties."

The recent decisions of this Court upon questions closely kindred to those involved in this case, and the recent elaborate citation of authorities in a somewhat similar case, now pending before this Court (The Minnesota case) causes me to feel that the most service I can be to the Court, if I can aid it at all, is in undertaking to place the case at bar in its proper class with other cases decided by this Court.

MY MAIN PURPOSE WILL, THEREFORE, BE TO SHOW THAT THIS CASE FALLS IN THE CLASS OF CASES, WHICH THIS COURT HAS HELD CAN NOT BE MAINTAINED, AGAINST STATE OFFICERS, BECAUSE THOSE CASES WERE, WITHIN THE MEANING OF THE ELEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, SUITS AGAINST STATES.

Before discussing that particular question, however, I desire to discuss three others closely connected with it, and to a degree involving it.

A COURT OF EQUITY CAN NOT ENJOIN CRIMINAL PROCEEDINGS.

This applies alike to all courts of equity, whether, in England or the United States Courts, or State Courts.

Suess v. Noble, 31 Fed., 835.
Hensley v. Meyers, 45 Fed., 283.
High on Injuction, paragraphs 28 and 30.

Since courts of equity deal only with civil and property rights, they will not interfere with criminal proceedings, and this is true even though the court of equity already had jurisdiction over the parties to the subject matter concerning which the criminal matter is instituted.

High on Injuction, paragraph 68.

Lord Chief Justice Holt, of the Queen's Bench, is reported in the case of *Holderstaff v. Saunders,* 1 Mod., 16, as follows:

"Sure chancery will not grant an injunction in a criminal matter under examination in this court, and if they did the court would break it, and would protect any one that would proceed in contempt of it."

This quotation is quoted with approval in *Ex Parte Sawyer,* 124 U. S., 200. In this latter case, the Circuit Court of the United States issued an injunction against the city officials of the city of Lincoln, Neb., enjoining them from proceeding under an ordinance to inquire into the right of one Parsons to hold the office of Police Judge. Parsons alleged that his rights were being infringed contrary to the Constitution of the United States. The officers of the city violated the injunction, contending that the Circuit Court of the United States was without jurisdiction to issue it. They were attached for contempt of the Circuit Court, and sued out a writ of *habeas corpus* before the United States Supreme Court. Mr. Justice Gray delivered the opinion, from which the following is quoted:

"Under the Constitution and the laws of the United States the distinction between common law and equity, as existing in

England at the time of the separation of the two countries, has been maintained, although both jurisdictions are vested in the same courts. *Fenn v. Holmes,* 62 U. S., 21 How., 481, 484-487 (16, 198-200); *Thompson v. Central Ohio R. R. Co.,* 73 U. S., 6 Wall., 134 (L. Ed., 18, 765); *Heine v. Levee Comrs.,* 86 U. S., 19 Wall., 655 (22 L. Ed., 223).

"The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecutor, the punishment, or the pardon of crimes or disdemeanors, or over the appointment and removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity, to restrain or relieve against proceedings for the punishment of offences, or for the removal of public officers, is to invade the domain of courts of common law, or the executive and administrative department of the Government.

"Any jurisdiction over the criminal matters that the English Court of Chancery ever had became obsolete long ago, except as incidental to its peculiar jurisdiction for the protection of infants, or under its authority to issue writs of *habeas corpus* for the discharge of persons unlawfully imprisoned. 2 Hale, P. C., 147; *Gee v. Pritchard,* 2 Swanst., 402, 413; 1 Spence Eq., Jur., 689, 690; *Attorney-General v. Utica Ins. Co.,* 2 John. Ch., 371, 387.

"From long before the Declaration of Independence it has been settled in England that a bill to stay criminal proceedings is not within the jurisdiction of the Court of Chancery, whether those proceedings are by indictment or by summary process.

* * * * * * *

"Lord Chancellor Hardwicke, while exercising the power of the Court of Chancery, incidental to the disposition of a case pending before it, of restraining a plaintiff, who had by his bill submitted his rights to its determination, from proceeding as to the same matter before another tribunal, either by indictment or by action, asserted in the strongest terms the want of any power or jurisdiction to entertain a bill for injunction to stay criminal proceedings, saying: 'This court has not originally and strictly any restraining power over criminal prosecutions'; and again: 'This court has no jurisdiction to grant an injunction to stay proceedings on a *mandamus;* nor to an indictment; nor to an information; nor to a writ of prohibition, that I know of.' *Mayor, etc., and Corporation of York v. Pilkinton,* 2 Atk., 302; S. C., 9 Mod., 273; *Montague v. Dudman,* 2 Ves. Sr., 396."

(Of course, the difference between an order in Chancery restraining a plaintiff who has selected that forum, and an injunction against the officers of a State, is apparent.)

"The modern decisions in England, by eminent equity judges, concur in holding that a court of Chancery has no power to restrain criminal proceedings, *unless they are instituted by the party to a suit already pending before it*, and to try the same right that is in issue there. *Attorney-General v. Cleaver*, 18 Ves. Jr., 211; *Turner v. Turner*, 15 Jur., 218; *Saull v. Browne*, L. R., 10 Ch., 64; *Kerr v. Preston*, L. R., Ch. D., 463.

"Mr. Justice Story, in his Commentaries on Equity Jurisprudence, affirms the same doctrine. (Story Eq. Jur., sec. 893.) And in the American courts, so fare as we are informed, it has been strictly and uniformly upheld, and has been applied alike whether the prosecutions or arrests sought to be restrained arose under statutes of the State or under municipal ordinances. *West v. Mayor of N. Y.*, 362; *Davis v. American Society, etc.*, 75 N. Y., 362; *Tyler v. Hamersley*, 44 Con., 419, 422; *Stuart v. LaSalle Co.*, 83 Ill., 341; *Devron v. First Municipality*, 4 La. Ann., 11; *Levy v. Shreveport*, 27 La. Ann., 620; *Moses v. Mobile*, 52 Ala., 198; *Gualt v. Wallis*, 53 Ga.. 675; *Phillips v. Stone Mountain*, 61 Ga., 386; *Cohen v. Goldsboro Comrs.*, 77 N. C., 2; *Waters Pierce Oil Co. v. Little Rock*, 39 Ark., 412; *Spink v. Francis*, 19 Fed. Rep., 670 and 20 Fed. Rep., 567; *Suess v. Noble*, 31 Fed. Rep., 855."

Again it is said that opinion:

"It has been contended by both parties in argument that the proceeding of the city council for the removal of Parson upon the charges filed against him is in the nature of a criminal proceeding; and that view derives some support from the judgment of the Supreme Court of Nebraska in *State v. Shelton*, 10 Nev., 452, 456, before cited. But if the proceeding is of a criminal nature, it is quite clear for the reasons and upon the authorities set forth in the earliest part of this opinion, that the case stated in the bill is wholly without the jurisdiction of any court of equity."

And again:

"The Circuit Court being without jurisdiction to entertain the bill in equity for an injunction, all its proceedings in the exercise of jurisdiction which it assumed are null and void. The restraining order, in the nature of an injunction, it had no power to make. The adjudication that the defendants were

guilty of a contempt in disregarding that order is equally void; their detention by the marshal under that adjudication is without authority of law, and they are entitled to be discharged."

This doctrine is firmly established by the decisions in the following cases:

Cohen v. Comrs, 77 N. C., 2.
Busbee v. Lewis, 85 N. C., 332.
Busbee v. Macy, 85 N. C., 329.
Pearson v. Boyden, 86 N. C., 585.
Wardens v. Washington, 109 N. C., 21.
Scott v. Smith, 121 N. C., 94.
Vickers v. Durham, 132 N. C., 880.
Paul v. Washington, 134 N. C., 363.
State v. Southern Railway Company, (opinion not yet published in official reports, but copies handed to this Court.)

See also—

Wallace v. Society, 67 N. Y., 28; 16 A. & E. Ency. of Law (2 Ed.) 370, where the rule is stated as follows:

"At one time the Court of Chancery in *England* exercised a jurisdiction partaking of a criminal character, but it was not without objection and protest from the Commons and the common law courts. It was excused, rather than justified, because of the inability of other tribunals to maintain internal peace and order, and because it was exercised for the defense of the poor and helpless. It passed away when the necessity for its exercise ceased, and the common law tribunals were restored to power sufficient for the repression of violence and wrong. It is a well-settled rule, both in England and America, that a court of equity has no jurisidiction to interfere by injunction to restrain a criminal prosecution, whether the prosecution be for violations of statutes or for an infraction of municipal ordinances. The rule applies whether the prosecution is by indictment or by summary process, and to prosecutions which are merely threatened or anticipated as well as to those which have already been commenced. So it is not within the power of the parties to waive the question relating to the jurisdiction of the court and to compel it to try the cause. If the prosecution is under an ordinance, no ground

for enjoining it is constituted by the fact that the ordinance is void, or that the party seeking the injunction has not committed a violation of the ordinance, or that the complaint in the prosecution under the ordinance states no cause of action."

The appellee relies upon the case of *Davis v. City of Los Angeles,* 189 U. S., 207, and the case of *Dobbins v. City of Los Angeles,* 135 U. S., 222, as establishing a rule different from that above announced and established by the long line of decisions cited. This Court did not announce, in those cases, that it was its purpose to overrule the doctrine, that equity will not entertain a suit to enjoining enforcing of criminal law, so firmly established in England and in the courts of the United States and of the various states, and it is not believed that such was the purpose, or effect of the two decisions referred to.

In *Davis v. City of Los Angeles,* the complainant instituted a suit in equity in the Circuit Court for the Southern District of California to enjoin the enforcement of certain municipal ordinances alleged to impair the obligation of a contract, with the municipality, under prior ordinances. The Circuit Court dismissed the bill, and this Court affirmed the judgment of the court, below, so that it was certainly not decided in that case that a bill for that purpose would lie.

In the opinion of the Court delivered by Mr. Justice Brown in that case, this language is found:

"That a court of equity has no general power to enjoin or stay criminal proceedings unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there, or to prohibit the invasion of the rights of property by the enforcement of an unconstitutional law, was so fully considered and settled in an elaborate opinion by Mr. Justice Gray, in re *Sawyer,* 124 U. S., 200, that no further reference to prior authorities is deemed necessary, and we have little more to do than to consider whether there is anything exceptional in the case under consideration to take it out of the general rule."

In the case of *Dobbins v. City of Los Angeles,* the Superior Court of the county of Los Angeles, in the State of California, dismissed a bill to enjoin the enforcement of the municipal

ordinance prohibiting the erection of gas works except within certain prescribed limitations. The Supreme Court of California affirmed the judgment of the Superior Court, and the case was reversed by this Court where it was brought upon a writ of error. The principle of enjoining the sovereign, the King or the State, from prosecuting criminal offenses was not passed upon. The proceeding was against a municipality, and the municipality could not have been considered as the sovereign State of California would have been considered, for in that event it would not have been subject to suit. In any event it does not raise the same question that is presented in this case, for the Eleventh Amendment to the Constitution of the United States applies to suits prosecuted *by citizens of another State, or by citizens of a foreign country in the courts of the United States.* That case was decided upon demurrer to the complaint, and the allegations thereof were taken as true. It is said in the opinion in that case, delivered by Mr. Justice Day:

"The Supreme Court of California, as may be gathered from its opinion in this case, based its decision upon the proposition that, as the exercise of the right to control the location and construction of gas works is within the power conferred by the Legislature upon the city, the act of the municipality in question can not be reviewed, because so to do would be a substitution of the judgment of the court, for that of the council upon a matter left within the exclusive control of the legislative body."

It is further said in that opinion:

"It may be admitted that every intendment is to be made in favor of the lawfulness of the exercise of municipal power, making regulations to promote the public health and safety, and that it is not the province of courts, except in clear cases to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people of the community."

This Court then says that subject to the limitations mentioned above, it is within the province of the courts to investigate municipal by-laws and ordinances, and even legislative enactments with a view to determine whether they are a lawful exercise of the police power.

In the bill in that case, the allegations of which were admitted by the demurrer, it was alleged that the ordinances were instigated by the Los Angeles Lighting Company, a corporation engaged in a rival business to that of the plaintiff there, to-wit: the manufacturing and supplying of gas, which corporation already had a monopoly. It was also alleged that the action of the municipal authorities complained of was taken for the purpose of protecting the Los Angeles Lighting Company in the enjoyment of its monopoly, and that the ordinances were passed in violation of the vested rights of the complainant.

What is said by this Court in that decision must be read in the light of the facts in that case, and it is no authority to sustain the position taken in this case, that the injunction issued by the Circuit Court in the case of the Southern Railway Company against the North Carolina Corporation Commission and Attorney-General is effective to lock the wheels of the criminal courts of North Carolina, nor does it support the position that courts of equity will enjoin prosecution in the criminal courts.

THE SUIT AGAINST THE ATTORNEY-GENERAL IS A SUIT AGAINST THE STATE, AND IS IN VIOLATION OF THE ELEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

That Amendment reads as follows:

"The Judicial powers of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or subjects of any foreign state."

In Ex Parte Ayers, 123 U. S., 443, a statute had been passed by the Legislature of the State of Virginia giving to the Attorney-General and solicitors the right to bring actions against tax-payers of the State who offered certain coupons, issued by the State, in payment of taxes, and placing the burden on such persons to prove the genuineness of the coupons and prescribing the manner of making the proof. A suit in equity was instituted in the Circuit Court of the United States for the Eastern District of Virginia, in which it was contended that the act of

the Legislature referred to was in impairment of the contract rights of those holding the coupons issued under a prior act of the Legislature. An injunction was issued by the Circuit Judge, Hugh L. Bond, and this was disobeyed by the Attorney-General, Mr. Ayers, who was thereupon attached for contempt of court, and upon being placed in custody sued out a writ of *habeas corpus* before the Supreme Court of the United States. The Supreme Court held that the petitioner was entitled to his discharge, because the Eleventh Amendment to the Constitution of the Unted States ousted the jurisdiction of the Circuit Court, and all its proceedings had in that case were void.

The following expressions are quoted from the opinion of the Court, delivered by Mr. Justice Matthews:

"The question really is whether the Circuit Court had jurisdiction to entertain the suit in which that order was made, because the sole purpose and prayer of the bill was by final decree perpetually to enjoin the defendants from taking any steps in execution of the act of May 12, 1887. The principal contention on the part of the petitioners is that the suit nominally against them is, in fact, and in law, a suit against the State of Virginia, whose officers they are, jurisdiction to entertain which is denied by the Eleventh Amendment to the Constitution, which declares that 'the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.' It must be regarded as the settled doctrine of this court, established by its recent decisions, 'that the question whether a suit is within the prohibition of the Eleventh Amendment is not always determined by reference to the nominal parties on the record,' *Poindexter v. Greenhow*, 114 U. S., 270, L. Ed. 29, 185. This is true, is not in harmony with what was said by Chief Justice Marshall in *Osborn v. Bank of U. S.*, 22 U. S., 9 Wheat., 738 (L. Ed. 6, 204). Accordingly in *Cunningham v. Macon B. R. R.*, 139 U. S., 446 (L. Ed., 37, 992), it was decided that those cases where it is clearly seen upon the record that a State is an indispensable party to enable the court, according to the rules which govern its procedure, to grant the relief sought, it will refuse to take jurisdiction.

"The relief so sought is against the defendants, not in their individual, but in their representative capacity as officers of the State of Virginia. The acts sought to be restrained are the

bringing of suits in the State of Virginia in their name and for their own use. If the State had been made a defendant to this bill by name, charged according to the allegations it now contains—supposing that such a suit could be maintained—it would have been subject to the jurisdiction of the court by a process served upon its Governor and Attorney-General, according to the precedents in such cases. If a decree could have been rendered enjoining the State from bringing suit against its tax-payers, it would have operated upon the State only through the officers who by law are required to represent it in bringing such suits, namely, the person itself, its Attorney-General, and the Commonwealth's Attorney for the several counties. For a breach of such an injunction, these officers would be amenable to the court as proceeding in contempt of its authority, and would be liable to punishment therefor by attachment and imprisonment. The nature of the case, as supposed, is identical with that the case is actually presented in the bill, with the single exception that the State is not named as a defendant. How else can the State be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, attorneys and agents? And if all such officers, attorneys and agents are personally subject to the process of the court, so as to forbid their acting in its behalf, how can it be said that the State itself is not subject to the juridiction of the court as an actual and real defendant? It is, however, insisted upon in argument that it is within the jurisdiction of the Circuit Court of the United States to restrain by injunction officers of the State from executing the provisions of State statutes, void by reason of repugnancy to the Constitution of the United States; that there are many precedents in which that jurisdiction has been exercised under the jurisdiction of this court, and that the present case is covered by their authority."

The Court, after reviewing the authorities relied on in support of this position, held with the petitioner that it was a suit against the State, and that the proceeding again him for contempt was null and void, and the petitioner was discharged. The language of the Court is:

"It is therefore within the prohibition of the Eleventh Amendment to the Constitution. *By the terms of that provision it is a case in which the judicial power of the United States does not extend.* The Circuit Court was *without jurisdiction* to entertain it. All the proceedings in the exercise of the jurisdiction

which it assumed are null and void. The orders forbidding the petitioners to bring the suits, for bringing which they were adjudged in contempt of its authority, it had no power to make. The orders adjudging them in contempt were equally void, and their imprisonment is without authority of law."

The decision of this Court in the case of *Pennoyer v. McConnaughy*, 140 U. S., 1, was delivered by Mr. Justice Lamar, and is in part as follows:

"It is well settled that no action can be maintained in any Federal Court by the citizens of one of the States against a State, without its consent, even though the sole object of such suit be to bring the State within the operation of the constitutional provision which provides, 'No State shall pass any law impairing the obligation of contracts.' This immunity of a State from suit is *absolute and unqualified*, and the constitutional provision securing it is not so construed as to place the State within the reach of the process of the court. Accordingly it is equally well settled that a suit against officers of a State to compel them to do the acts which constitute a performance by it of its contracts is, in effect, a suit against the State itself. In the application of this latter principle two classes of cases have appeared in the decisions of this court, and it is in determining to which class a particular case belongs that different views have been presented. The first class is when the suit is brought against the officer of the State, as representing the State's action and liability, making it, though not a party to the record, the real party against which the judgment will so operate as to compel it to specifically perform its contracts.

"The other class is where a suit is brought against defendants who, claiming to act as officers of the State, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State."

In the case of *Fitts v. McGee*, 172 U. S., 416, McGee and others had been appointed receivers of a railroad company, which owned a bridge company, which latter company maintained a bridge across the Tennessee River. The Legislature of Alabama passed an act fixing the maximum charges for use of the bridge by the public, and providing that the officers, agents and employees of the company, as well as the company,

should be liable to suits for penalties for making a greater charge than that allowed by law. There was a general statute of the State making it a misdemeanor for agents of bridge and road companies, having a right to charge toll, to charge more than the maximum amount fixed by the statute. The receivers instituted a suit in the Circuit Court of the United States against the Attorney-General of the State and the solicitor of one of the judicial circuits of Alabama, charged with the enforcement of the law, with a view of enjoining them from doing so. It was contended that certain employees of the bridge company had already been arrested, and that the penalties attached to the numerous indictments found and threatened, and the penalty suits threatened, deterred the complaintants from presenting their grievances, and that their property by reason of the late rate fixed by the statute, was being confiscated in violation of Eleventh Amendment to the Constitution.

In delivering the opinion of the Court, Mr. Justice Harlan used this language:

"The principal question before us is whether this suit is one of which a Circuit Court of the United States may take cognizance, consistently with the Constitution of the United States."

Again:

"What is and what is not a suit against a State has so frequently been the subject of consideration by this Court that nothing of importance remains to be suggested on either side of that question. It is only necessary to ascertain, in each case as it arises, whether it falls on one side of a line marked out by our former decisions. We are of opinion that the present case comes within the principles announced in Re Ayers, 123 U. S., 443."

The Justice quotes the following from the Ayers case:

"The very object and purpose of the Eleventh Amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the com-

plaints of private persons, whether citizens of other States or aliens, or that the course of their public policy and the administration of their public affairs should be subject to and controlled by the mandates of judicial tribunals without their consent, and in favor of individual interests."

After quoting further from the Ayers case, Mr. Justice Harlan proceeds as follows:

"If these principles be applied in the present case there is no escape from the conclusion that, although the State of Alabama was dismissed as a party defendant, this suit against its officers is really one against the State. As a State can act only by its officers, an order restraining those officers from taking any steps, by means of judicial proceedings, in execution of the statute of February 9, 1895, is one which restrains the State itself, and the suit is consequently as much against the State as if the State were named as a party defendant on the record. *If the individual defendants held possession or were about to take possession, or to commit any trespass upon, any property belonging to or under the control of the plaintiffs,* in violation of the latter's constitutional rights, they could not resist the judicial determination, in a suit against them, of the question of the right of such possession, by simply asserting that they held were entitled to hold the property in their capacity as officers of the State. In the case supposed they would be compelled to make good the State's claim against suits because of their official character."

Judge Harlan calls attention to the fact that no special duty was imposed on either the Attorney-General or the Solicitor by the Alabama act. Neither is there here with reference to fixing the maximum rate of 2 1-4 cents, and that is what the suit is about, and the injunction seeks to prevent.

Reliance is placed by the defendant upon the case of *Smythe v. Ames,* 169 U. S., 466. Of that case and other cases in the same line Mr. Justice Harlan says in *Fitts v. McGee, supra*:

"In support of the contention that the present suit is not one against the State, reference was made by counsel to several cases, among which were *Poindexter v. Greenhow,* 114 U. S., 270; *Allen v. Baltimore and Ohio Railroad Co.,* 114 U. S., 311; *Pennoyer v. McConnaughy,* 140 U. S., 1; *Re Tyler,* 149 U. S.,

164; *Regan v. Farmers Loan and Trust Co.*, 154 U. S., 362; *Scott v. Donald*, 165 U. S., 58; and *Smyth v. Ames*, 169 U. S., 466. Upon examination it will be found that the defendants in each of these cases were officers of the State, specially charged *with the execution of a State enactment* alleged to be unconstitutional, but under the authority of which, it was averred, they were committing or were about to commit some specific wrong or trespass to the injury of the plaintiff's rights. There is a wide difference between a suit against individuals holding official positions under a State, to prevent them, under the sanction of the unconstitutional statute, from committing *by some positive act a wrong or trespass*, and a suit against officers of a State *merely to test the constitutionality* of a State statute, in the enforcement of which those officers will act *only by formal judicial proceedings in the courts of the State.*"

THE INJUNCTION ISSUED BY THE UNITED STATES COURT WAS ISSUED UPON THE IDEA THAT THE DEFENDANTS IN THE EQUITY SUIT HAD SOME PARTICULAR DUTIES IMPOSED UPON THEM BY STATUTES OF THE STATE. THIS IS CLEARLY NOT SO, BUT IF IT WERE, THE EXTENT TO WHICH THE CIRCUIT JUDGE HAS GONE IN DISCHARGING THE APPELLEE, WOOD, IS AN ASSERTION THAT THE INJUNCTION REACHES NOT ONLY THE DEFENDANTS NAMED IN THE BILL, BUT THE JUDGES, GRAND JURIES, AND ALL OFFICERS OF THE STATE COURTS WHO ARE NOT PARTIES TO THE PASSENGER RATE SUIT, AND ARE NOT EVER ALLEGED TO HAVE ANY PARTICULAR DUTIES TO PERFORM WITH RESPECT TO THE PASSENGER RATE ACT.

A court may have jurisdiction of the subject matter and the parties, and yet not have the organic power to make particular orders therein. As long as the Eleventh Amendment is a part of the organic law of the land States can not be sued, and for the same reason that they can not be, any order of the United States Courts, directed against other persons or against all persons must fall short of reaching the State. The Eleventh Amendment to the Constitution of the United States would be

utterly useless and of none effect if it merely protectetd the State and its officers against being made parties to a suit, and yet by a decree of a United States Court, in a suit brought by a citizen of another State or country against a citizen of a particular State, the State Executive and Judicial Departments of the Government would be bound by a decree issued in the case to which they were not parties.

In the case of *Ex Parte Fisk*, 113 U. S., 713, the Circuit Court of the United States had jurisdiction of the subject matter and the parties, and it undertook to order one of the parties to submit to an examination in a manner not provided by the statutes of the United States. A party to the suit who refused to be examined was attached for contempt of the Circuit Court, and he thereupon applied to the Supreme Court of the United States for a writ of *habeas corpus*. Mr. Justice Miller delivered the opinion of the court and said in part:

"But did the Court transcend its jurisdiction in fining the petitioner for contempt? Or rather, did it have the power to make the order requiring him to submit to the preliminary examination? For if it had that power it clearly could enforce obedience to the order by fine and imprisonment if necessary."

The Court thereupon proceeds to show that under the statutes the Circuit Court did not have the power to make the order to discharge the prisoner and uses the following language:

"The Circuit Court was, therefore, without authority to make the orders for the examination of the petitioner in this case, and equally without authority to enforce these orders by process for contempt."

In the case of *Windsorn v. McVeigh*, 93 U. S., 274, Mr. Justice Field, speaking for the Court, said:

."The doctrine invoked by counsel that where a court has once acquired jurisdiction it has the right to decide every question which arises in the cause, and its judgment, however erroneous, can not be collaterally assailed, is undoubtedly correct as a general proposition, but like all general propositions is subject to many qualifications in its application. All courts, even the

highest, are more or less limited in their jurisdiction; they are limited to particular classes of actions, such as civil or criminal, or to particular modes of administering relief such as legal or equitable, or to transactions of a special character such as arise on navigable waters or relate to the testamentary disposition of estates or to the use of a particular process in the enforcement of their judgments. It must act judicially in all things, and can not then transcend the power conferred by the law. If, for instance, the action be upon a money demand, a Court, notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant. If the action be for libel or personal tort the Court can not order in the case a specific performance of the contract. If the action be for the possession of real property the Court is powerless to attempt in the case the probate of a will. Instances of this kind show that the general doctrine stated by counsel is subject to many qualifications."

Therefore, even if the Circuit Court of the United States had jurisdiction of the subject matter and of the parties, in the case of *Southern Railway Company v. The North Carolina Corporation Commission and the Attorney General and Assistant Attorney General*, the order made by that Court fell short of restraining the Judge and other officers of the Police Court, who, in the performance of their duty, had caused the arrest, and had tried and sentenced Wood, the appellee, and therefore, Wood's remedy was the same as that pointed out in *Fitts v. McGhee*, and other cases, to-wit: to set up any defense he might have in the State court, and it is presumed that if he had done so his cause would have been rightfully decided by the State Courts; and if it had not been, then it could have been brought to this court and decided by it without any unseemly proceeding or danger of conflict between State and Federal Courts.

THE SUIT IN EQUITY, ENTITLED "SOUTHERN RAILWAY COMPANY V. THE CORPORATION COMMISSION, THE ATTORNEY GENERAL AND ASSISTANT ATTORNEY GENERAL OF NORTH CAROLINA," PENDING IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA, FALLS IN A CLASS WITH IN RE AYERS, AND FITZ V. McGHEE, AND IN THAT LINE OF CASES; AND NOT IN A CLASS WITH RAGAN V. TRUST COMPANY, SMYTH V. AMES, AND PROUT V. STAR, AND THAT LINE OF CASES.

The first class of cases, mentioned as being decided by this Court, holds that the Eleventh Amendment to the Constitution of the United States is an absolute protection and bar against suits brought in the United States Courts, by citizens of another State or foreign country, against a particular State; and that it is not material whether the State is the party of record or not; but if its officers, through which the State alone can act, are sued, that it is, within the meaning of the Eleventh Amendment to the Constitution of the United States, a suit against the State.

The second class of cases decided by this Court, and referred to above, holds that State officials can be sued in the United States Courts, by citizens of other States or foreign countries, where there is a Federal question involved that will give jurisdiction, when—

(1) They were, as to the plaintiff, personal wrongdoers and trespassers; or,

(2) The action sought to be controlled was purely ministerial.

No suit has ever been sustained against State officers, as such, unless they were about to commit a trespass for which they would be personally liable, or unless they were performing some special or ministerial duty imposed upon, and required of them, by an act of the Legislature of the State.

RAGAN v. TRUST COMPANY, 154 U. S., 362.

In that case the suit was brought by the Farmers Loan and Trust Company, a foreign corporation, in the State of Texas, as

trustee in a deed of trust executed by a railroad company to secure a second series of mortgage bonds against the railroad company and the members of the Railroad Commission of the State of Texas and the Attorney-General of that State, to enjoin the putting into effect the tariff of rates made by the Commission, and to enjoin the enforcement, by the Attorney-General and the Commission, of such laws. The statute under which the Commission acted, imposed certain penalties upon the railroad company and its agents for disobeying the rules and orders of the Commission relating to such rates fixed by it. The Attorney-General was specially charged with the duty of instituting suits in the name of the State for the recovery of all penalties made payable to the State, and of all penalties imposed by the statute, except those recoverable by individuals. In section 19 of the Texas Act, under consideration in the Ragan case, is the language:

"If such railroad shall refuse or neglect to comply with such order, the Board shall order the Attorney-General or the County Attorney of the proper county to institute a suit to compel such railroad company to comply with such order, and it shall be the duty of the Attorney-General or the County Attorney of the proper county, by the request of the Board, to apply to the Circuit Court for a writ of mandamus, to compel such railroad company to comply with such order."

It was made, by the Texas Act, the mandatory duty of the Board of Railroad Commissioners, and the Attorney-General to enforce the penalties provided against the railroad company by the act.

The appellee in this case, Wood, as do all litigants who deplore and oppose the protection given to the States by the Eleventh Amendment, cited the Ragan case as a leading authority in support of his position, but he ignores the fact that the Court, in its opinion delivered by Mr. Justice Brewer, expressly stated that while that suit was not one against the State, that there was another class of cases from which State officials were rendered immune from suit in the United States Courts by citizens of another State or foreign country, by the Eleventh Amendment to the Constitution of the United States.

Making the distinction between the two classes of cases and referring to the Attorney-General of Texas in the Ragan case, the Court said:

"In these cases he is not sued as or because he is the officer of the government, but as an individual, and the Court is not ousted of jurisdiction because he asserts authority as such officer."

The Court, through Mr. Justice Brewer, also said in that case:

"The question as to when an action against officers of a State is to be treated as an action against the State has been of late several times carefully considered by this Court, especially in the case of *Ex parte* Ayers, 123 U. S., 443, by Mr. Justice Matthews, and *Pennoyer v. McConnaughy,* 140 U S., by Mr. Justice Lamar."

SMYTH v. AMES, 169 U. S., 466.

In that case the suit was brought in the Circuit Court of the United States for the District of Nebraska, by stockholders and citizens of another State, against the Union Pacific Railway Company and other corporations, some of which were incorporated in Nebraska, and certain persons, citizens of Nebraska, who held the offices, respectively, of Attorney-General, Secretary of State, Auditor of Public Accounts, State Treasurer, and Commissioner of Public Land and Buildings, who constituted the State Board of Transportation, and also against three persons, citizens of Nebraska, Secretaries of that Board.

Section 6 of the Nebraska Act, under consideration before the Court in that case, provides that the Board of Transportation is empowered to reduce rates fixed by the act whenever it shall seem just, and to revise and classify freight whenever a majority of the Board shall think it just and reasonable. Section 9 of the Nebraska Act provides that any common carrier disobeying its provisions shall be fined not less than one thousand dollars, and then fines are graduated for repeated offenses.

The injunction issued by Mr. Justice Brewer, presiding in the Circuit Court, prohibited the receivers of the railroad companies, the defendants, from putting into effect the rates provided by the

act, and the members of the Board of Transportation and Secretaries of the Board were enjoined from entertaining any complaint against the railroad companies, or any, or either of them, or their receivers, etc., for disobeying the act, and from instituting or prosecuting any proceeding against either of the companies or their receivers for disobeying the said act; and particularly from reducing its present rates or charges for transportation of freights, to the rates prescribed in that act, and that the Attorney-General be enjoined from bringing or causing to be brought any proceeding of any kind for or on account of any violation of that act. The duties imposed upon the members of the Commission in that case, who also happened to be State officers, were particular, mandatory, and ministerial. It was decided in that case that the suit was not one against the State, though this point was not pressed upon the argument, and the Court, speaking through Mr. Justice Harlan, kept in mind the classification above referred to.

That the Court did have in mind two classes of cases is shown beyond controversy by what is said of *Smyth v. Ames* and other cases like it by Mr. Justice Harlan in *Fitts v. McGhee*, hereinafter more particularly referred to.

PROUT V. STAR, 188 U. S., 537.

In that case, on August 3, 1903, suit was brought in the Circuit Court of the United States for the District of Nebraska by James C. Star and others, stockholders, citizens of Nebraska, against a railway company, and George Hastings, Attorney-General, and others, constituting the Board of Transportation, for the purpose of restraining the company according to the provision of an act of the State of Nebraska, and for the purpose of enjoining the Attorney-General of the State, and others, as members of the Board of Transportation, from entertaining or determining any complaint, or prosecuting any proceeding to enforce the provisions of the act; and also for the purpose of enjoining the Attorney-General from bringing any proceeding for or on account of the non-observance of the act.

The defendants, the members of the Board of Transportation,

insisted that they were officers of the State, and were protected from suit by the Eleventh Amendment to the Constitution of the United States. No testimony was taken in the case of *Prout v. Star*, but it was taken in the case of *Smyth v. Ames, supra*, and the opinion in *Smyth v. Ames* was rendered by this Court March 7, 1898; and there was an agreement in the case of *Prout v. Star* that the proof taken in *Smyth v. Ames* would be accepted as if taken in this case, and that this case should not further be particularly proceeded with until the Supreme Court of the United States should render its decree in the other case, when a decree should be rendered, conformable to the decree entered by the Supreme Court in *Smyth v. Ames*, and certain other cases. Meanwhile Hastings, the Attorney-General, was succeeded in his office by Smith, who, by proper order, was substituted as defendant.

Overlooking or disregarding the preliminary injunction of the Circuit Court and agreement referred to, Smyth brought an action in the Supreme Court of the State of Nebraska against the railway company, alleging that it had charged rates in excess of those fixed by the act, and claiming judgment for three hundred and ten thousand dollars, the amount of penalties alleged to have accrued. The attention of Attorney-General Smyth was then called to the injunction, and he thereupon gave counsel for the company to understand that before the expiration of his term of office he would dismiss the action he had brought.

In January, 1901, Prout succeeded Smyth in office, and he declined to dismiss the action in the Supreme Court of Nebraska. Whereupon the company filed its answer, setting forth the prior pendency of the action in the Circuit Court of the United States, and the existence of the injunction filed therein.

In April, 1901, Star and others filed their supplemental bill in the Circuit Court of the United States, alleging the facts as recited above, and praying that the injunction already issued be extended to Prout, as Attorney-General. He demurred on the ground that the bill was against him in his official capacity, and that the Circuit Court was, under the Eleventh Amendment, without jurisdiction. The demurrer was overruled and the in-

junction issued. It was ordered by the Circuit Court that if Mr. Prout stood by his demurrer and declined further to plead, final decree should go against him, as in the case of *Smyth v. Ames,* and, Mr. Prout electing to stand by the demurrer, a final decree was so entered, and from it he appealed to the Supreme Court.

This Court held that the agreement to abide by the decree in *Smyth v. Ames* was binding, and it is said by this Court that it is not called upon to consider the merits of the case, because they have been concluded by the reasoning and opinion in the other case.

It is said in the opinion of *Prout v. Star:*

"The judicial power of the United States has not infrequently been exercised in securing to the several States the proper government and immunity intended by the Eleventh Amendment."

A number of cases are cited in support of this proposition, one of which is *Fittz v. McGhee.*

What is said with respect to *Smyth v. Ames* not being a suit against the State because it is to enjoin the performance of special or ministerial duties commanded by the act in question, is equally applicable to *Prout v. Star.* Indeed, Prout was proceeding to collect penalties imposed by the act in question, and which the act made it mandatory to collect, and besides there had been a final adjudication by this Court that the said act was unconstitutional, and by reason of the agreement referred to, Mr. Prout was bound by it.

It is manifest, when the facts in the case of *Southern Railway Company v. The North Carolina Corporation Commission and Attorney-General and Assistant Attorney-General* are examined, as they are herein later, that that case does not fall in the class with *Ragan v. Trust Company, Smyth v. Ames* and *Prout v. Star,* and other similar cases.

EX PARTE AYERS, 123 U. S., 443.

In that case a statute had been passed by the Legislature of the State of Virginia giving to the Attorney-General and solicitors the right to bring actions against taxpayers of the State who

offered certain coupons, issued by the State, in payment of taxes, and placing the burden on such persons to prove the genuineness of the coupons and prescribing the manner of making the proof. A suit in equity was instituted in the Circuit Court of the United States for the Eastern District of Virginia, in which it was contended that the act of the Legislature referred to was in impairment of the contract rights of those holding the coupons issued under a prior act of the Legislature. An injunction was issued by the Circuit Judge, Hon. Hugh L. Bond, against bringing suits in the State courts under that statute, and this was disobeyed by the Attorney-General, Mr. Ayers, who was thereupon attached for contempt of court, and upon being placed in custody sued out a writ of *habeas corpus* before the Supreme Court of the United States. The Supreme Court held that the petitioner was entitled to his discharge, because the Eleventh Amendment to the Constitution of the United States ousted the jurisdiction of the Circuit Court, and all its proceedings had in that case were void.

The following expressions are quoted from the opinion of the Court delivered by Mr. Justice Matthews:

"The question really is whether the Circuit Court had jurisdiction to entertain the suit in which that order was made, because the sole purpose and prayer of the bill was by final decree perpetually to enjoin the defendants from taking any steps in execution of the Act of May 12, 1887. The principal contention on the part of the petitioners is that the suit nominally against them is, in fact, and in law, a suit against the State of Virginia, whose officers they are, jurisdiction to entertain which is denied by the Eleventh Amendment to the Constitution, which declares that 'the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens or subjects of any foreign State.' It must be regarded as the settled doctrine of this Court, established by its recent decisions, 'that the question whether a suit is within the prohibition of the Eleventh Amendment is not always determined by reference to the nominal parties on the record.' *Poindexter v. Greenhow,* 114 U. S., 270, L. Ed., 29, 185. This is true, is not in harmony with what was said by Chief Justice Marshall in *Osborn v. Banks of U. S.*, 22 U. S., 9 Wheat., 738 (L. Ed., 6, 204). Ac-

cordingly, in *Cunningham v. Macon B. R. R.*, 139 U. S., 446, (L. Ed., 37, 992), it was decided that those cases where it is clearly seen upon the record that a State is an indispensable party to enable the Court, according to the rules which govern its procedure, to grant the relief sought, it will refuse to take jurisdiction.

The relief so sought is against the defendants, not in their individual, but in their representative capacity as officers of the State of Virginia. The acts sought to be restrained are the bringing of suits in the State of Virginia in their name and for their own use. If the State had been made a defendant to this bill by name, charged according to the allegations it now contains—supposing that such a suit could be maintained—it would have been subject to the jurisdiction of the Court by a process served upon its Governor and Attorney-General, according to the proceedings in such cases. If a decree could have been rendered enjoining the State from bringing suit against its taxpayers, it would have operated upon the State only through the officers who by law are required to represent it in bringing such suits, namely, the person itself, its Attorney-General, and the Commonwealth's Attorney for the several counties. For a breach of such an injunction, these officers would be amenable to the Court as proceeding in contempt of its authority, and would be liable to punishment therefor by attachment and imprisonment. The nature of the case, as supposed, is identical with that the case is actually presented in the bill, with the single exception that the State is not named as a defendant. How else can the State be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, attorneys and agents? And if such officers, attorneys and agents are personally subject to the process of the Court, so as to forbid their acting in its behalf, how can it be said that the State itself is not subject to the jurisdiction of the Court as an actual and real defendant? It is, however, insisted upon in argument that it is within the jurisdiction of the Circuit Court of the United States to restrain by injunction officers of the State from executing the provisions of the State statutes, void by reason of repugnancy to the Constitution of the United States; that there are many precedents in which that jurisdiction has been exercised under the jurisdiction of this Court, and that the present case is covered by their authority."

The Court, after reviewing the authorities relied on in support of this position, held with the petitioner that it was a suit against the State, and that the proceeding against him for con-

tempt was null and void, and the petitioner was discharged. The language of the Court is:

"It is therefore within the prohibition of the Eleventh Amendment to the Constitution. *By the terms of that provision it is a case in which the judicial power of the United States does not extend.* The Circuit Court was *without jurisdiction* to entertain it. All the proceedings in the exercise of the jurisdiction which it assumed are null and void. The orders forbidding the petitioners to bring the suits, for bringing which they were adjudged in contempt of the authority, it had no power to make. The orders adjudging them in contempt were equally void, and their imprisonment is without authority of law."

FITTS v. McGHEE, 172 U. S., 416.

In that case McGhee and others had been appointed receivers of a railroad company, and they brought suit in the Circuit Court of the United States for the Northern District of Alabama, against the State of Alabama, William C. Oates, as Governor of the State of Alabama, and William C. Fittz, as Attorney-General of the State of Alabama, to enjoin the taking of any steps under a certain statute of Alabama fixing the tolls to be charged on a bridge across the Tennessee River, and providing penalties to be recovered by the parties who were required to pay rates in excess of those fixed by the statute, in case of violation, on the ground that the said statute was repugnant to the Federal Constitution, and the rates therein fixed were confiscatory.

Subsequently, the suit was dismissed as to the State of Alabama. It was alleged in the bill of complaint that the rates fixed by the act were arbitrary, unreasonable, and amounted virtually to the confiscation of the plaintiffs' property, and that the act was in violation of the Constitution of the United States, in that such legislative enactment deprived the owners of the bridge of their property without due process of law, and denied to them the equal protection of the law. It was further alleged that the clause in the act imposing a penalty for demanding or receiving a higher rate of toll than those prescribed was intended, and had the effect to deter the plaintiffs from questioning by legal proceedings the validity of such legislation, and that the plaintiffs

were remediless except by a bill in equity, seeking injunctive relief, restraining William C. Oates as Governor of the State of Alabama, William C. Fittz as Attorney-General of the State of Alabama, and all persons whomsoever from instituting any proceeding against the complainants, under the forfeiture clause of said act.

The defendants appeared specially for the purpose of moving, and did move, that the bill be dismissed upon the ground that the suit was one against the State, and prohibited by the Constitution of the United States.

The bill was then amended, by leave of Court, by adding to it, in effect, that frequent and numerous demands had been made of the toll gate keeper at the bridge, to pass persons at the rate of toll fixed by the act, and upon the refusal of the toll gate keeper to permit them to pass by upon the payment of the rates so fixed, and his requiring them to pay the rates of toll fixed by the plaintiffs, they had paid the toll so required of them under protest, and had threatened to institute suit or suits against the plaintiff under the penalty clause of the act, and had also threatened to procure proceedings to be instituted by the Governor and Attorney-General.

Special reference was made to William H. Gilliam, a private citizen of Alabama, as one of the parties or persons who had made threats of such suits and proceedings. The bill was amended by making Gilliam a party-defendant.

Subsequently an order was made, enjoining and restraining William C. Fittz, as Attorney General of the State of Alabama, and William H. Gilliam, and all persons whomsoever, from instituting or procuring the institution of any proceedings against the plaintiffs or either of them, by mandamus or otherwise.

At a later day the bill was again amended by alleging that at Fall Term, 1895, of the Circuit Court of Lauderdale County, Ala., a large number of indictments—some one hundred in number—were found by the Grand Jury of said court, against Thomas Clem and G. W. Brabson, who were the toll gate keepers at the public crossing of said bridge for the complainants.

These indictments were found under section 4151 of the criminal Code of Alabama, which makes it unlawful to demand,

take or receive any unreasonable charge or toll. The complainants alleged further in their amended bill that these indictments were found and prosecuted because the rates of toll which they had charged were the rates fixed by the receivers before the passage of the act reducing the tolls, which act was alleged to have been unconstitutional.

A. H. Carmichael, Solicitor for the Judicial District in which Lauderdale County is situated, was made a party defendant, and was enjoined.

Clem and Brabson, the agents who sold the tickets over the bridge in excess of the rate fixed by the statute, were arrested under the indictments in the State Court, and applied to the Circuit Court of the United States for writs of *habeas corpus.*

These are the material facts in that case.

The material facts in the case of *Southern Railway Company v. the Attorney General of North Carolina* are exactly similar. The two cases stand shoulder to shoulder, and they march together throughout step by step. The maximum rates fixed by the North Carolina rate went into force as did the Alabama rates by virtue of the Act of the Legislature itself. The only penalty prescribed by the act, or by any act, so far as the State is concerned, was that the agents who violate the law should be guilty of a misdemeanor. The punishment was left absolutely to the discretion of the courts. It might be a penny and the costs, or it might be a greater fine or imprisonment. The corporation was not made indictable. The penalties to be recovered by private persons, the State has no concern about, and no interest in. If it be said they are excessive, as was said in *Fittz v. McGhee,* and this be true, that part of the statute providing penalties in favor of private individuals may fail, as was said of the penalties in *Ragan v. Trust Company, supra,* and yet the remainder of the statute would stand unimpaired. The Attorney General in the Southern Railway case had no special duties to perform, but occupied the same position as the Attorney General in *Fitts v. McGhee.* The arrest of the appellee Wood was by reason of criminal proceedings in the State Court, just as in the case of Clem and Brabson.

It is thue that in the case of *Fittz v. McGhee* the Circuit Court declared the act complained of unconstitutional because the rates were confiscatory, and in that case the Solicitor, Carmichael, was enjoined from prosecuting any indictment against any one violating the provisions of that act. In those respects the case of *Fitts v. McGhee* differs from the case of *Southern Railway Company v. the Attorney General.*

The rates have never been declared even *prima facie* confiscatory, and the officers of the State Court causing the indictment and trying the appellee, Wood, have never been enjoined.

The interest of the State in *Fitts v. McGhee* was the interest that it had under the police power of the State, and surely the interest of the State of North Carolina in this case is the same.

This Court held by a unanimous opinion delivered by Mr. Justice Harlan, that the suit of *Fitts v. McGhee* was in effect a suit against the State, though the State was not by name a party, and that the Circuit Court of the United States had no jurisdiction to issue the injunction against the Attorney General or the Solicitor, and that the discharge of Clem and Brabson by the United States Circuit Judge was unlawful. It is said in the opinion in that case:

"The plaintiffs stated that the toll gatherers in their service had been indicted in a State Court for violating the provisions of the Act of 1895 with respect to tolls. Let them appear to the indictment and defend themselves upon the ground that the State statute is repugnant to the Constitution of the United States. The State Court is competent to determine the question thus raised and is under a duty to enforce the mandates of the supreme law of the land. *Robb v. Connally*, 111 U. S., 624. And if the question is determined adversely to the defendants in the highest court of the State in which the decision could be had, the judgment may be re-examined by this court upon writ of error. That the defendants may be frequently indicted constitutes no reason why a Federal Court of equity should assume to interfere with the ordinary course of criminal procedure in a State Court."

Speaking of the discharge of Clem and Brabson upon writs of *habeas corpus*, this Court said:

"It was error to discharge them and thereby interfere with their trial in the State Court. As already indicated, the Circuit Court, sitting in equity, was without jurisdiction to prohibit the institution and prosecution of these criminal proceedings in the State Courts."

Recognizing that there are the two classes of cases as indicated by me, the Court says further in that opinion:

"It is to be observed that neither the Attorney General of Alabama nor the Solicitor of the Eleventh Judicial Circuit for the State appears to have been charged below with any special duty in connection with the Act of February 9, 1895."

Answering the same argument that has been made here in behalf of the appellee, and distinguishing the cases relied upon by the appellee here from the case of *Fitts v. McGhee*, the Court in that opinion says:

"In support of the contention that the present suit is not one against the State, reference was made by counsel to several cases, among which were *Poindexter v. Greenhow*, 114 U. S., 270; *Allen v. Baltimore & O. R. Co.*, 114 U. S., 311; *Pennoyer v. McConnaughy*, 140 U. S., 1; *Re Tiler*, 149 U. S., 164; *Ragan v. Trust Company*, 154 U. S., 362; *Scott v. Donald*, 165 U. S., 58; *Smyth v. Ames*, 169 U. S., 466.

Upon examination it will be found that the defendants in those cases were officers of the State, specially charged with the execution of a State enactment alleged to be unconstitutional, but under the authority of which, it was averred, that they were committing, or were about to commit, some specific wrong, or trespass to the injury of the plaintiffs' rights. There is a wide difference between a suit against individuals holding official positions under a State, to prevent them, under the sanction of an unconstitutional statute, from committing, by some positive act a wrong or trespass, and a suit against the officers of a State merely to contest the constitutionality of a State statute, in the enforcement of which those officers will act only by formal judicial proceedings in the courts of the State."

The argument on behalf of the appellee proceeds in absolute disregard of this distinction.

The question as to when a suit is against a sovereign has been considered by this Court in cases instituted against officers of

the United States, and it has been held "that the question as to whether a particular suit is one against the State within the meaning of the statute must depend upon the same principles that determine whether a particular suit is one against the United States. *Tindale v. Wesley*, 167 U. S., 216."

See also *U. S. v. Lee*, 195 U. S., 196; *Belknap v. Schield*, 164 U. S., 10; *Minnesota v. Hitchcock*, 185 U. S., 370; *Postal Supply Company v. Bruce*, 194 U. S., 601.

EVEN IF A STATE COURT HAS NOT JURISDICTION TO TRY THE PARTY CHARGED WITH CRIME, IN THIS CASE THE APPELLEE, WOOD, THE UNITED STATES JUDGES AND COURTS WILL NOT INTERFERE AND DISCHARGE THE PRISONER BY MEANS OF WRITS OF HABEAS CORPUS, EXCEPT UNDER CERTAIN CONDITIONS WHICH ARE UNUSUAL, AND THIS CASE DOES NOT COME WITHIN ANY OF THE EXCEPTIONS.

The Federal and State governments can never conflict in the administration of the law, unless one, or the other, acts without authority.

Each is supreme in its own sphere; the Federal government is supreme with respect to those matters and things which are granted to it by the States, in the Constitution of the United States.

The State governments are supreme with respect to all matters and things not granted by the Federal Constitution.

The Federal government is as powerless to lawfully trench upon the State, as the State government is powerless to trench upon the rights of the Federal government.

The Federal courts are as powerless to take cognizance of matters over which the State courts, under the law, have jurisdiction, as the State courts are powerless to issues processes and interfere with proceedings that are properly cognizable in the Federal courts.

There are expressions in some opinions of the Supreme Court of the United States, and also in some opinions of the Supreme

Courts of the various States, which may lead to confusion and misunderstanding, when segregated from other parts of the opinions and considered alone, but a proper analysis of all the opinions of the Supreme Court of the United States, on this question, when read in the light of the above well-recognized principle and distinction, will clarify the subject and avoid confusion.

The writ of *habeas corpus* can not be issued by a Federal judge in disregard of States' rights, and the writ of *habeas corpus* from a State judge can not issue in violation of the agreements between the States, contained in the Constitution of the United States.

This limitation upon the powers of the two governments, confining each to matters within its own proper sphere, in no way impairs the efficacy of the writ of *habeas corpus* guaranteed by the fundamental law.

What Judge, Federal or State, shall issue the writ of *habeas corpus,* and when will it issue and when be refused?

I shall undertake to sustain what I have said by extended quotations from, and analysis of, cases decided by the Supreme Court of the United States.

In *Robb v. Connolly,* 111 U. S., 624, a man by the name of Robb had been sent, as a commissioner, by the Governor of Oregon to the State of California, and in that State, upon the warrant of the Governor of California, he arrested one C. H. Bailey, a fugitive from justice from the State of Oregon, and was about to take his prisoner away, when a writ of *habeas corpus* was issued by a Judge of the Superior Court for the City and County of San Francisco, directing Robb to have his prisoner, the petitioner for the writ, before the Judge, and disclose the cause of his detention. Robb made return that he was acting under the laws of the United States providing for extradition of fugitives, and the warrant of the Governor of California, and that, therefore, the Superior Court of San Francisco had no jurisdiction, and Robb was thereupon attached for contempt; whereupon he sued out a writ of *habeas corpus* before the Supreme Court of California, and the writ was discharged, and the case went by writ of error to the Supreme Court of the United States, which sustained the ruling of the Supreme Court of California.

The opinion of the Supreme Court of the United States was delivered by Mr. Justice Harlan. He says, speaking for a unanimous Court, that it is always proper for response to be made to a writ of *habeas corpus*, but that where the writ was not properly issued, as when a State Judge issues a writ of *habeas corpus*, and thereby interferes with the administration of the law by the Federal Court, with respect to which the State Judge has no jurisdiction, that the person to whom the writ is addressed need not produce his prisoner. The Court in that case quotes from the case of *United States v. Booth*, 21 Howard, 513.

In that case the prisoner was held in custody by an officer of the United States in pursuance of a judgment of the Supreme Court of the United States, founded upon an indictment charging him with offense against the laws of the United States, and a writ of *habeas corpus* was issued by a Justice of the Supreme Court of the State.

The quotation is as follows:

"This right to inquire by process of *habeas corpus*, and the duty of the officer making a return, grows, necessarily, out of the complex character of our government, and the existence of two distinct and separate sovereignties within the same territorial space, each of them restricted in its powers, and each, within its sphere of action prescribed by the Constitution of the United States, independent of the other."

"But, after the return is made and the State Judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further. They then know that the prisoner is within the dominion and jurisdiction of another government, and that neither the writ of *habeas corpus* nor any other process issued under State authority can pass over the line of division between the two sovereignties."

The Court there is speaking of the limitations upon the powers of the State Judge, because in that case the authority called into question was that of the State Judge who had issued the writ of *habeas corpus*. When the writ is issued by a Federal Judge it is just as true of him as of the State Judge, "that neither the writ of *habeas corpus*, nor any other process issued under *Federal* authority can pass over the line of division between the two sovereignties."

Mr. Justice Harlan uses this language in *Robb v. Connolly:*

"Underlying the entire argument in behalf of the plaintiff in error (Robb, the agent who refused to obey the orders of the State Judge upon a writ of *habeas corpus*) is the idea that the judicial tribunals of the States are excluded altogether from the consideration and determination of questions involving an authority or a right, privilege, or immunity, derived from the Constitution and laws of the United States. But this view is not sustained by the statutes defining and regulating the jurisdiction of the courts of the United States. In establishing those courts, Congress has taken care not to exclude the jurisdiction of the State courts from every case to which, by the Constitution, the judicial power of the United States extends."

In concluding the opinion in that case it is said:

"And, since the alleged fugitive was not, at the time the writ in question was issued, in the custody of the United States, by any of their tribunals or officers, the Court or Judge issuing it did not violate any right, privilege or immunity secured by the Constitution and laws of the United States, in requiring the production of the body of the fugitive upon the hearing of the return to the writ, to the end that he might be discharged if, upon the hearing, it was adjudged that his detention was unauthorized by the Act of Congress providing for the arrest and surrender of fugitives from justice or by the laws of the State in which he was found."

These propositions are established by the authorities:

First. That the writ from a Circuit Judge to a Sheriff can not properly require the production of a prisoner held by the Sheriff for violation of a State law, when the prisoner has had a trial with right to sue out a writ of error to the United States Supreme Court, or when he is about to be put upon his trial, if these facts appear upon the face of the petition, or upon the return of the Sheriff such are found to be the facts; in such case this ousts the jurisdiction of the Federal Judge who issued the writ, and he should so hold and discharge the writ. Whenever it appears that the prisoner is held by an officer of the State Court for a violation of the State law, and is not denied a hearing, the jurisdiction of the Federal Judge who issued the writ of *habeas corpus* is ousted, and the prisoner must make his application for his writ of *habeas corpus* to a State Court.

Second. This is so even though the guilt or innocense of the prisoner depends upon whether the State law is in conflict with the Federal Constitution, for this can be determined by the State Court, and finally by the Supreme Court of the United States.

In the case of *Ex parte* Crouch, 112 U. S., 178, application was made to the Supreme Court of the United States for a writ of *habeas corpus* to discharge the petitioner from custody by the State Court. Mr. Chief Justice Waite, delivering the opinion, said:

"The right of the petitioner to a writ of *habeas corpus* from this court is put, in the petition, upon the ground that the petitioner is detained in custody by the State Court in violation of the Constitution of the United States, because the statute which prohibits an officer from accepting the coupons impairs the obligation of the contract of the State to receive them, and is, on that account, inoperative and void by reason of the provision of the Constitution, which precludes the State from passing such laws."

In that case, the question was whether the petitioner was guilty of doing business as a sample merchant without paying a license tax, when he had tendered, before commencing business, to the proper revenue officers of the State, the amount of the required license tax in coupons cut from State bonds, which the State, when it issued the bonds, agreed should be receivable in payment of all State dues; when the officer refused to accept the tender because, by a statute enacted after the issuing of the bonds, the tax receiving officers were prohibited from taking the coupons for this tax.

It is further said in that opinion:

"It is elementary learning that, if a person is in the custody of a State Court of competent jurisdiction, not illegally asserted, he can not be taken from that jurisdiction and discharged on *habeas corpus* issued by a court of the United States, simply because he is not guilty of the offense for which he is held. All questions which may arise in the orderly course of the proceeding against him are to be determined by the Court to whose jurisdiction he has been subjected, and no other Court is au-

thorized to interfere to prevent it. Here the right of the prisoner to a discharge depends alone on the sufficiency of his defense to the information under which he is held. Whether his defense is sufficient or not is for the Court which tries him to determine. If in this determination errors are committed, they can only be corrected in an appropriate form or proceeding for that purpose. The office of a writ of *habeas corpus* is neither to correct such errors nor to take the prisoner away from the court which holds him for trial, for fear, if he remains, they will be committed."

Ex parte Fonda, 117 U. S., 516, was an application to the Supreme Court of the United States for leave to file petition for writ of *habeas corpus*. The petitioner had been sentenced by a State Court of Michigan, for a term in the penitentiary of that State, and was confined under the sentence. It was alleged that his imprisonment was illegal upon two grounds, one of which was that the petitioner was convicted, sentenced and imprisoned contrary to the Constitution of the United States and the laws of Congress.

Mr. Chief Justice Waite, delivering the opinion, says:

"No reason is suggested why the Supreme Court of the State may not review the judgment of the Circuit Court of the county, upon which the question is raised as to the application of the statute, under which the conviction has been had, to embezzlement by the servants and clerks of national banks; nor why it should not be permitted to do so without interference by the courts of the United States. The question appears to be one which, if properly presented by the record, may be reviewed in this court after a decision by the Supreme Court adverse to the petitioner."

In the case of *Ex parte Royall*, 117 U. S., 241, it was made to appear that there was a Virginia statute which made it unlawful to sell or collect coupons of certain Virginia bonds without paying a special license tax of $1,000, and, in addition, 20 per cent on the face value of each coupon. Royall sold a coupon without paying a special tax, and a bill of indictment was found against him by a grand jury in the State Court, and he was taken into custody of the Sergeant of Richmond to await trial.

Writs of *habeas corpus* were applied for and obtained from the United States Circuit Judge.

The Circuit Judge dismissed the petition, upon the ground that the Circuit Court was without jurisdiction to discharge the prisoner from custody. There was an appeal by the petitioner to the Supreme Court of the United States.

It is held by this Court that if the petition, upon its face, makes out a proper case, the writ should have issued to inquire into the cause of restraining the petitioner of his liberty, and that the case might be summarily heard and determined "as law and justice require."

In that case, the act was alleged to appear upon its face to be unconstitutional—in other words, the Circuit Judge was petitioned to inspect the statute and see whether it was in conflict with article 1, sec. 10 of the Constitution.

The rate law, in the case at bar, it is alleged, will appear, upon taking testimony, to be confiscatory, and therefore violative of the Fourteenth Amendment to the Constitution of the United States.

Some court should make that investigation. Shall it be the Judge upon a writ of *habeas corpus* or in any other manner, or shall it be the State Court, which is about to proceed with the trial? The last case cited is authority for the position taken by me, that the Circuit Judge has no jurisdiction to do more than inform himself as to how the petitioner is held, and then discharge the writ, if the State Court has jurisdiction to try the offense. The Federal Court is not permitted to substitute itself for the State Court to try the questions of fact, the determination of which is necessary to decide the question of the constitutionality of the act.

If the Circuit Judge can cause the prisoner to be brought before him, it is his duty to dismiss the petition, and remand the prisoner, even in a case like Royall's, and the case at bar is a stronger case for the State than that case.

It is said by Mr. Justice Harlan in that case:

"But it is not alleged and it does not appear in either case that he is unable to give security for his appearance in the State Courts, or that reasonable bail is denied him, or that his trial

will be unnecessarily delayed. The question as to the constitutionality of the law under which he is indicted must necessarily arise at the trial under the indictment, and is one upon which, as we have seen, it is competent for the State Court to pass."

Holding in that case that the Circuit Judge had discretion as to the time and mode of exerting its powers, the opinion says:

"That discretion should be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution."

Again it was there said:

"The Circuit Court was not at liberty, under the circumstances disclosed, to presume that the decision of the State Court would be otherwise than is required by the fundamental law of the land, or that it would disregard the settled principles of constitutional law announced by this Court, upon which is clearly conferred the power to decide ultimately and finally all cases arising under the Constitution and laws of the United States."

The writ was dismissed in Royall's case.

It was said in that case, however, that there were certain exceptional cases where the prisoner should be discharged.

First. Where the petitioner is in custody by State authority, for an act done, or omitted to be done, in pursuance of a law of the United States, or of an order, process, or a decree of a court or Judge thereof.

Second. When a subject or citizen of a foreign State, and domiciled therein, is in custody, under like authority, for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission or order or sanction of any foreign State under color thereof, the validity or effect whereof depends upon the law of nations.

Third. In such and like cases of urgency involving the authority and operation of the general government or the obligations of this country to, or its relations with, foreign nations.

Fourth. When a person is in custody of a State court and is needed as a witness in a Federal court, he may be taken by *habeas corpus,* but, of course, not discharged.

This case comes under none of the exceptions.

It can not reasonably be contended that the petitioner in this case is protected by reason of any order or decree of a Federal court, for the reason, first, that the complainant, the Southern Railway Company, and its agents are not enjoined from selling tickets at 2¼ cents. The Southern Railway Company can not evade responsibility by going into the United States Circuit Court and procuring an injunction against others.

In the second place, the injunction issued by the Circuit Court was in a case where it had and could have no jurisdiction of the subject matter, and its decree was a nullity.

The petitioner Royall, in *Ex Parte Royall, supra,* also filed an application before the Supreme Court of the United States for a writ of *habeas corpus,* upon the grounds as stated in his petition, that the statute under which he was arrested and held in custody was repugnant to the Constitution of the United States; and, consequently, that he is restrained of his liberty in violation of that instrument. The petition states the same facts as are set out in the case of *Ex Parte Royall* above referred to.

The case here referred to is reported in 117 U. S., 255.

Mr. Justice Harlan, delivering the opinion of the Court in that case, says:

"The application for the writ must be denied. It is sufficient to say that if this Court has power, under existing legislation and upon *habeas corpus,* to discharge the petitioner, who is in custody under the process of a State Court of original jurisdiction, for trial on an indictment charging him with offense against the laws of that State—upon which it is not necessary to express an opinion—such power ought not, for the reasons given in the other cases just decided, to be exercised in advance of his trial."

In re Thomas H. Harding, a petition for writ of *habeas corpus* before the United States Supreme Court, 120 U. S., 782, Chief Justice Waite, delivering the opinion of the Court, said:

"This Court has no jurisdiction for the discharge on *habeas corpus* by a person in prison under sentence of the Territorial

Court in a criminal case, unless the sentence exceeds the jurisdiction of that Court, or there is no authority to hold him under the sentence."

Ex Parte Ayres, 123 U. S., 443, is a leading and important case in point.

The case of *State of New York v. Eno,* 155 U. S., 90, was one in which Eno, an officer of a National Bank, was indicted for forgery under the law of the State of New York. He sued out a writ of *habeas corpus* before the Circuit Court of the United States for the Southern District of New York, and was discharged from custody. The ground for his application for the writ of *habeas corpus* was that the State of New York had no jurisdiction to try him for forgery as an officer of a National Bank. The Supreme Court of the United States reversed the order of the Circuit Judge, and directed that the writ of *habeas corpus* be dismissed and that Eno be remanded to the custody of the proper State authorities. The grounds for this ruling were that the questions presented by the writ of *habeas corpus* should have been tried in the State Court, and presented, if desired, to the Supreme Court of the United States, by writ of error. In delivering the opinion of the Court Mr. Justice Harlan used language as follows:

"'We can not suppose,' the Court said (referring to what was said by the Supreme Court of the United States in *Ex Parte Royall,* 117 U. S., 241), 'that Congress intended to compel those courts by such means to draw to themselves, in the first instance, the control of all criminal prosecutions commenced in State Courts exercising authority within the same territorial limits where the accused claims that he is held in custody in violation of the Constitution of the United States. The injunction to hear the case summarily and thereupon dispose of the party as law and justice require does not deprive the Court of discretion as to the time and mode in which it will exert the powers conferred upon it."

(What is meant by the "discretion" of the courts of the United State to issue writs of *habeas corpus* for parties in custody under authority of the State Courts, as this term is used in *Ex Parte Royall, supra,* will be explained by the fact that the

Supreme Court of the United States in Eno's case overruled the Circuit Judge in granting the writ of *habeas corpus*, and from the following language which immediately succeeds that last above quoted.)

"That discretion should be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution."

It may be well to refer to case of *Thomas v. Loney*, 134 U. S., 372. It will be observed that this court in Ex Parte Royall recognized certain cases as constituting exceptions to the general rule among which are cases of urgency, involving the authority and operation of the general government. Loney's case was of that class. (Loney was indicted in a State Court for an alleged false oath made before a Notary Public taking testimony in a contested congressional election case.) The Supreme Court of the United States held that the public interest required that he should not be held by the State Court, which had no jurisdiction to try him for the offense.

The Court concluded the opinion in Eno's case as follows:

"After considering the merits of the several questions discussed by counsel, we are of opinion that the Circuit Court erred in granting the prayer of the accused. He should not have been discharged from the custody of the State authorities, especially as he does not appear to have been under indictment in any court of the United States for the offenses alleged to have been committed by him."

In the case of *Pepke v. Cronan*, 155 U. S., 98 (Lawyers' Ed. 39, 84), Pepke had been prosecuted under the law of the State of Connecticut. He had violated an order of the Court made in that case, alleging that the law under which the proceeding had been had was in contravention of the Constitution of the United States, and the judgment against him, therefore, void. A writ

of *habeas corpus* was issued, and upon hearing was discharged, and Pepke appealed to the Supreme Court of the United States.

Mr. Chief Justice Fuller, delivering the opinion of the Court, said:

"It is insisted upon the argument that the judgment in contempt was not appealable, but it was conceded that the validity of the law and of the sentence could be tested by the Supreme Court of the State on *certiorari* or *habeas corpus*, and no reason was suggested why, if the judgment of the District Judge was the final judgment of the highest court of the State in which a decision in the matter could be had, a writ of error to this court might not be applied for. After considering the merits of the questions discussed, the judgment must be affirmed upon the authority of *Ex Parte Fonda*, 117 U. S., 516; *Wood v. Bruch*, 140 U. S., 278; *Cook v. Hart*, 146 U. S., 183; *New York v. Eno*, 155 U. S., 80."

In the case of *Andrews v. Swartz*, 156 U. S., 273, the appellant had been convicted of a criminal offense in the State Courts of New Jersey, and while in custody under sentence, he applied to the Circuit Court of the United States for the district of New Jersey for a writ of *habeas corpus*, which was denied; whereupon he appealed to the Supreme Court of the United States and the action of the Circuit Court was affirmed.

Mr. Justice Harlan, delivering the opinion of the Court, said in part:

"If the State Court, having entered upon the trial of the case, committed error in the conduct of the trial to the prejudice of the accused, his proper remedy was, after the final judgment of conviction, to carry the case to the highest court of the State having jurisdiction to review that judgment, then upon a writ of error to this court, if the final judgment of such State Court denied any right, privilege or immunity specially claimed or which was secured to him by the Constitution of the United States."

The case of *Bergemann v. Backer*, 157 U. S., 655, was also a case in which the appellant, after having been convicted of a criminal offense by the State Courts of New Jersey, in violation, as he alleged, of the 14th Amendment to the Constitution of the

United States, applied to the Circuit Court of the United States for a writ of *habeas corpus*, and this being denied, appealed to the Supreme Court of the United States.

Mr. Justice Harlan, delivering the opinion of the Court, held that his proper remedy was by writ of error, and not by writ of *habeas corpus*, and affirmed the ruling of the Circuit Court.

In the case of *Ex Parte Belt*, 159 U. S., 97, an application was made to the Supreme Court of the United States by the petitioner for a writ of *habeas corpus*, upon the ground that he was held in custody under sentence of the Supreme Court of the District of Columbia, rendered in violation of some of the provisions of the Constitution of the United States.

Mr. Chief Justice Fuller, in delivering the opinion of the Court, said:

"The general rule is that the writ of *habeas curpus* will not issue unless the Court under whose warrant the petitioner is held is without jurisdiction, and it can not be used to correct errors. Ordinarily the writ will not lie where there is a remedy by writ of error or appeal; but in rare and exceptional cases it may be issued, although such remedy exists."

(These exceptional cases were specified in *Ex Parte Royall*, and are set out above.)

In *Whitten v. Tomlinson*, 160 U. S., 234, the appellant filed a petition in the Circuit Court of the United States for the District of Connecticut for writ of *habeas corpus*, to be addressed to the Sheriff of the County of New Haven in the State of Connecticut, alleging that he was unlawfully restrained of his liberty in violation of the Constitution of the United States. His application for the writ was denied, and upon appeal by him to the Supreme Court of the United States the order of the Circuit Court denying the writ was affirmed.

The opinion of the Court concludes as follows:

"There could be no better illustration than this case affords of the wisdom, if not necessity, of the rule established by the decisions of this Court, above cited, that a prisoner in custody under authority of a State should not, except in a case of peculiar urgency, be discharged by a court or Judge of the United States,

upon a writ of *habeas corpus*, in advance of any proceedings in the courts of the State to test the validity of his arrest and detention. The adoption of a different rule would, undoubtedly, interfere with the exercise of the criminal jurisdiction of the several States, and with the performance by this Court of its appropriate duties."

The Court in delivering the opinion in that case refers to the case of *Cunningham v. Nagle*, 135 U. S., where Nagle was charged with the duty of guarding the person of a United States Judge, and in performing this duty killed a man, and was arrested by the authorities of the State in which the killing occurred.

The Court also refers to the cases of *Thomas v. Loney*, 134 U. S., 372, where Loney was arrested by a State magistrate for false swearing in a congressional contested election case.

Also to the case of *Mali v. Hudson County Jail Keeper* ("Wildenhus's case"), 120 U. S., in which the prisoner was arrested by the State authorities for an offense committed while one of a crew of a foreign merchant vessel while on board the vessel in a port in the State, and when the arrest was alleged to be contrary to a treaty between the United States and a foreign country.

After referring to these cases, the Court said:

"But except in such peculiar and urgent cases, the courts of the United States will not discharge the prisoner by *habeas corpus* in advance of a final determination of his case in the courts of the State, and even after such determination in those courts, will generally leave the prisoner to the usual and orderly course of proceeding by writ of error from this Court."

In the case of *Markuson v. Boucher*, 175 U. S., 184, the petitioner was indicted and sentenced in the State court, and being in custody sued out a writ of *habeas corpus* before a United States Judge, alleging that his imprisonment was in violation of the Fourteenth Amendment to the Constitution of the United States, and of other provisions of the Constitution. The writ of *habeas corpus*, after having been issued, was discharged, and the prisoner was remanded to the custody of the State authorities.

On appeal to the Supreme Court of the United States, Mr. Justice McKenna, delivering the opinion of the Court, said in part:

"We have frequently pronounced against the review by *habeas corpus* of the judgment of the State courts in criminal cases, because some right under the Constitution of the United States was alleged to have been denied the person convicted, and have repeatedly decided the proper remedy was by writ of error. It is not necessary to review the cases or to repeat or justify their reasonings. We lately stated the rule and the reasons for it in the case of *Baker v. Grice*, 169 U. S., 284, 42 L. Ed., 748, and *Tinsley v. Anderson*, 171 U. S., 101, 43 L. Ed., 91. In the latter passing on an appeal from judgment dismissing a writ of *habeas corpus*, the Chief Justice said: 'The dismissal by the Circuit Court of its own writ of *habeas corpus* was in accordance with the rule, repeatedly laid down by this Court, that the Circuit Courts of the United States, while they have power to grant writs of *habeas corpus* for the purpose of inquiring into the cause of restraint of liberty of any person in custody under the authority of a State in violation of the Constitution, a law or treaty of the United States, yet except in cases of peculiar urgency, ought not to exercise that jurisdiction by a discharge of the person in advance of a final determination of his case in the courts of the State, and, even after such final determination, will leave him to his remedy to review it by writ of error to this Court. *Ex Parte Royall*, 117 U. S., 241; *Ex Parte Fonday*, 117 U. S., 516; *Re Frederick*, 149 U. S., 70; *Pepke v. Cronan*, 155 U. S., 100; *Bergeman v. Backer*, 157 U. S., 655; *Whitten v. Tomlinson*, 160 U. S., 40; *Baker v. Grice*, 169 U. S., 284.' In *Baker v. Grice*, Mr. Justice Peckham said: 'Instead of discharging, they (the Federal courts) will leave the prisoner to be dealt with by the courts of the State; that after a final determination of the case by the State Court, the Federal courts will even then generally leave the petitioner to his remedy by writ of error from this Court. The reason for this course is apparent. It is an exceedingly delicate jurisdiction given to the Federal Court by which a person under an indictment in a State Court and subject to its laws, may, by a decision of a single Judge of the Federal Court upon a writ of *habeas corpus*, be taken out of the custody of the officers of the State and finally discharged therefrom, and thus a trial by the State courts of an indictment found under the laws of the State be finally prevented.'"

The case of *Minnesota v. Brundage*, 180 U. S., 499, was a proceeding which originated in the State Court of Minnesota, under an indictment against Brundage for selling oleomargarine.

The defendant, upon being arrested, alleged that he was restrained of his liberty in violation of the Constitution of the United States, and sued out a writ of *habeas corpus* before a Judge of the Circuit Court of the United States, and the prisoner was discharged.

Mr. Justice Harlan, delivering the opinion of the Court, said:

"The State insists, upon the appeal, that the statute, at least in the particulars applicable to this case, was consistent with the Constitution of the United States. This question is one of great importance, but we do not deem it necessary now to consider it; for, in our opinion, the Circuit Court should have denied the application for the writ of *habeas corpus*, without prejudice to renewal of the same after the accused had availed himself of such remedies as the law of the State afforded for the review of the judgment of the State courts of which he complains."

And again:

"The present case does not come within any of the exceptions to the general rule announced in the case above cited. It is not, in any *legal view*, one of urgency. The accused does not, in his application, state any reason why he should not be required to bring the question involved in the prosecution against him before a higher court of the State and invoke its power to discharge him, if in its judgment he is restrained of his liberty in violation of the Constitution of the United States. It can not be assumed that the State Court will hesitate to enforce any rights secured to him by that instrument; for upon them equally with the courts of the Union rests the duty of maintaining the supreme law of the land."

And again it is said in that opinion:

"Among the cases cited in support of the action of the Circuit Court was *Minnesota v. Barber*, 136 U. S., 313, 34 L. Ed., 455, and *Plumley v. Mass.*, 155 U. S., 461, 39 L. Ed., 223. It must be admitted that in the first named case the general rule announced in prior an subsequent cases was not applied. The reasons for not applying it do not appear from the opinion of the Court. It may be that the precise point now under examination was not called to its attention. *Plumley v. Mass.* is not in point, for it came to this Court upon writ of error to the highest Court of Massachusetts."

And again it is there said:

"We do not think that the exercise by a Federal Court of its powers upon *habeas corpus* to discharge one held in custody by the State authorities and charged with a violation of the State enactment, should be materially controlled by any consideration of the extent of particular business interests that may be affected by a prosecution instituted in a State tribunal against him, or by the indirect effect of his detention in custody upon the rights of the general public."

The case of *Storti v. Massachusetts*, 183 U. S., 46 L. Ed., 120, was one in which there had been conviction in the State Court and a petition for a writ of *habeas corpus* filed before the Circuit Court of the United States for the District of Massachusetts, alleging that the petitioner was restrained of his liberty in violation of the Fourteenth Amendment to the Constitution of the United States, and also contrary to the Third Article of the treaty between the United States and the King of Italy. The Circuit Court discharged the writ of *habeas corpus*, and the Supreme Court of the United States on appeal in an opinion delivered by Mr. Justice Brewer, affirmed the judgment and said in part:

"It is an attempt to substitute a writ of *habeas corpus* for a writ of error, and to review the proceedings in a criminal case in the State Court, by such collateral attack rather than by direct proceedings in error—something which this Court has repeatedly said ought seldom to be done."

In the case of *Reid v. Jones*, 187 U. S., 151 (47 L. Ed., 116), the appellant Reid had been convicted and sentenced for transporting cattle in violation of a statute of Colorado, enacted for the protection of cattle in that State against disease. The appellant claimed that he was restrained of his liberty in violation of a provision of the Constitution of the United States giving to Congress full control over interstate commerce.

The Circuit Court of the United States dismissed the application for the writ of *habeas corpus*, and Reid appealed to the Supreme Court of the United States.

Mr. Justice Harlan, delivering the opinion of that Court, said:

"The merits of this case have been fully considered in Case Number 269 (*Reid v. Colorado*, 187 U. S., 137), but if this had

not been, we should dismiss the present appeal; for one convicted in a State Court for an alleged violation of the criminal statutes of the State, and who contends that he is held in violation of the Constitution of the United States, must, ordinarily, first take his case to the highest court of the State in which the judgment could be reviewed, and thence bring it, if unsuccessful there, to this Court by writ of error; that only in certain exceptional cases, of which the present is not one, will a Circuit Court of the United States, or this Court, upon an appeal from a Circuit Court, intervene by writ of *habeas corpus* in advance of the final action by the highest court of the State."

In the case of *Riggins v. United States*, 199 U. S., 547, Mr. Chief Justice Fuller used this language in the opinion of the Court:

"It is settled that the writ of *habeas corpus* will not issue unless the Court under whose warrant the petitioner is held is without jurisdiction, and that it can not be used merely to correct errors. Ordinarily the writ will not be granted when there is a remedy by writ of error or appeal, yet, in rare and exceptional cases, it may be issued, although such remedy exist."

Again it is there said:

"There is nothing in this record to disclose that there were any special circumstances which justified a departure from the regular course of judicial procedure. That departure is contrary to the views we have heretofore explicitly expressed, and, if we acquiesce in this method of invoking our jurisdiction, we shall find ourselves obligated to decide questions in advance of final adjudication, contrary to the settled rule, and to many decisions we have heretofore announced upon the subject."

In the case of *Urquhart v. Brown*, decided by this court on March 7, 1907, and reported in 205, U. S., 179, the opinion of the Court being delivered by Mr. Justice Harlan, it is said:

"The exceptional case in which a Federal Court or Judge may sometimes appropriately interfere by *habeas corpus* in advance of final action by the authorities of the State are those of great urgency that require to be promptly disposed of; such, for instance, as the cases involving the authority of the operations of the general government, or the obligations of this coun-

try to, or its relations with, foreign nations. The present case is not within any of the exceptions recognized in our former decisions. If the applicant felt that the decision upon *habeas corpus* in the Circuit Court of the State was in violation of his rights under the Constitution or Laws of the United States, he could have brought the case by writ of error directly from that court to this court.

This recent decision of this Court is an authority against the action of his Honor, Circuit Judge Pritchard, in discharging the appellee Wood from the custody of the State officials.

In view of this long line of authorities, which clearly show that the Supreme Court of the United States has undertaken to lay down and adhere to fixed rules, with reference to the issuing of writs of *habeas corpus* by Federal Courts to discharge the prisoners from the custody of State Courts, it would seem that the only ground for a controversy in the case at bar is, as to whether it comes within the exceptions to the general rule, that the writ of *habeas corpus* will not be substituted for a writ of error. In many of the cases it is said that the writ should not have been issued by the Federal Judge, because there were no special circumstances which justified it. What are special circumstances within the meaning of the term, as used by the Supreme Court of the United States, is definitely laid down, first in the case of *Ex Parte Royall*, 117 U. S., 247, as exceptions to the general rule. These exceptions are often repeated in cases subsequent to Royall's case, and they are in substance heretofore set out in this brief.

That a case like the one at bar does not come within any of the exceptions, and is not a case of unusual circumstances, justifying the issuance of the writ of *habeas corpus* is, in effect, definitely decided in the case of *Fitts v. McGee*, 172 U. S., 516.

It was alleged by the complainants in that suit that the clause in the act imposing penalties for demanding and receiving higher rates of toll than those prescribed, was intended, and had the effect to deter the plaintiffs from questioning by legal proceedings, the validity of such legislation. Certain parties who had made threats to institute suits and proceedings for penalties for making excessive charges, were made parties to the suit, and

A. H. Carmichael, a Solicitor for one of the judicial districts of the State of Alabama, was subsequently made a party to that suit.

Subsequently, in an amendment to the bill, it was alleged that, after the commencement of the suit in equity, the agents of the bridge company who had collected tolls for it had at the Fall Term, 1895, of the Circuit Court of Lauderdale County, Alabama, been indicted in a large number of cases,—some one hundred in number—by the grand jury, by virtue of a statute of the State of Alabama providing that any person being an officer, or agent, servant or employee of any incorporated road or bridge company, who takes, receives, or demands any greater charge or toll for travel, or passage, over such road or bridge, than is authorized, shall be guilty of a crime. It was alleged that writs of arrest had issued to the Sheriff of the county, and that he had arrested two of the agents of the bridge company, Clem and Brabson, and that such proceedings were in contempt of the order of the Court, which had appointed the receivers, and was in violation of an injunction which the Circuit Court had issued in the suit brought by the receivers, and which still remained in force, "enjoining the said Governor, Attorney General, and all persons whomsoever from instituting any suits and proceedings" under the above statute of the State.

The suit was dismissed by the complainants as to the State.

The cause was heard, upon a motion by the Governor and Attorney General, to dismiss the bill, upon the ground that the suit was one against the State, in violation of the Constitution of the United States.

Clem and Brabson sued out writs of *habeas corpus*, and were released by the United States Circuit Judge, each on his own recognizance in the sum of $150, conditioned that they would appear in court from day to day until discharged. Various proceedings were had before a final decree was found, but when it was rendered, it was considered that the complainants were entitled to the relief sought, and that the act was violative of the constitutional rights of the owners of the bridge, and of the complainants. This was reversed upon appeal to the Supreme Court of the United States.

Mr. Justice Harlan, delivering the opinion of the Court, used this language:

"There were no exceptional or extraordinary circumstances in these cases to have justified the interference by the Circuit Court, under writs of *habeas corpus*, with the trial of the indictments found in the State Courts."

There is no material circumstance in the case at bar that did not exist in the case just cited, except that the Solicitors for the State are not made parties.

Respectfully submitted,

E. J. JUSTICE,
Of Attorney for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 474.

THOMAS F. HUNTER, SHERIFF OF BUNCOMBE COUNTY, NORTH CAROLINA, APPELLANT,

versus

JAMES H. WOOD, APPELLEE.

SUPPLEMENTAL BRIEF FOR APPELLANT

C. B. AYCOCK,
Of Counsel.

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I desire to file the following supplemental brief:

In the first place, the appellant contends that the Circuit Court of the United States was without jurisdiction for the reason that under Maximum Passenger Rate Act, ratified on the 2d day of March, 1907, the defendant Corporation Commissioners and the Attorney-General and the Assistant Attorney-General were without any duties to perform in relation to the enforcement of said act. The act in question marked a new movement on the part of the State of North Carolina. For many years it had built up a body of laws relating to railroad conduct and management within the State, and had put these laws relating to railroad conduct within the control and enforcement of the Corporation Commissioners and the Attorney-General. For some reason the Legislature concluded, so far as passenger rates were concerned, to take these directly in hand. This departure is made clear by reference to the Freight Rate Act passed at the same session. That act provides for certain duties to be performed by the Corporation Commission and the Attorney-General. The Legislature recognized the inherent difficulties of dealing with freight tariffs, but it found no such trouble in reference to passenger rates, and undertook to deal

with these directly. It was the unquestioned purpose of the Legislature to take this matter entirely into its own hands. This view has been taken by the Supreme Court of North Carolina in the case of *State v. Southern Railway Company*, reported in the Southeastern Reporter, vol. 59, No. 6, December 21, 1907, at page 570.

Counsel for appellee have cited in their brief many sections from The Revisal of North Carolina relating to the duties of the Corporation Commission and the Attorney-General, and seek to make them applicable to the Passenger Rate Act under discussion. It is their effort to show that this act is a part of the system, one of a series or group, and thereby to find support for their contention that the Circuit Court had jurisdiction. This deduction would be fair and natural if it were not manifest from the whole history of legislation upon the subject in North Carolina that the Legislature intended to make a distinct departure from its settled policy and itself to control the passenger rates.

"Although the statute under consideration may be one of a series or group, it may be that the Legislature designs to depart from the general policy or provision of enactments on the general subject; and if such a design is unmistakably apparent on the face of the act it must be given effect."

Black on Interpretation of Laws, page 209.

This purpose of the Legislature may be made clear by reference to an allegation made by the Southern Railway in its bill in the Circuit Court, wherein it alleges that the 3¼ cents per mile for first-class and 2¾ cents per mile for second-class rates were fixed by the Corporation Commission, and were deemed by said Commission to be just and reasonable. If this allegation be taken to be true, it may furnish a sufficient reason for the legislative interference and for taking the matter away from the Corporation Commission; and moreover, it is strongly illustrative of the danger of allowing the Circuit Court to assume jurisdiction in the premises. Suppose the State, acting through her Legislature was convinced by an examination of the reports of the railroad that the rates in force were too high, and was

also convinced by non-action on the part of the Corporation Commission that it would not interfere to lower said rates, can it be possible that legislative action can be stopped in a suit by a railroad company against the Commission, the railroad company alleging that the legislative rates was too low and the Corporation Commission admitting it, and this in spite of the action of the Legislature, which alone has jurisdiction to pass laws for the State? It seems to me to state this proposition is to answer it. The Legislature in passing the act under discussion undertook to fix the rates itself and to make them effective. It made the act dependent upon no one else. It was to go into effect on July 1st without regard to action on the part of anybody. The provision that the Corporation Commission shall publish the rates fixed by this act for the several railroads operating in the State on or before the first day of July, 1907, is put into the act in order that the public may have knowledge of the rates in force on the various railroads in the State—every railroad corporation itself knows whether its mileage is sixty miles or under, and whether it had been constructed within the twelve months preceding the first day of January, 1907. The act provides its own punishments and penalties. *The punishments and penalties provided in the act differ from and are inconsistent with those provided in the general laws.*

Section 1086 of the Revisal provides that the railroads shall have thirty days in which to make good any injury done by it in violation of the rules and regulations provided and prescribed by the Corporation Commission, and if after such notice it does not make ample and full recompense for the wrong done it shall incur a penalty for each offense of $500.

In the act under consideration the penalty attaches without any notice and can not be remedied by the railroad companies complying with the request of the Corporation Commission to pay the difference between the rate charged and the rate permitted by law.

Section 1087 provides that the penalty of $500 for failure to obey any rule, order or regulation of the Corporation Commission shall be recovered in the Superior Court of Wake County

in the name of the State on the relation of the Corporation Commission, and each day's violation is made a separate offense.

Does the defendant insist that the penalties provided in these two sections are in force if the act under discussion is constitutional?

Are the penalties provided in the act in addition to these penalties, or do the penalties and punishments provided in the Maximum Rate Act take the place of those provided in the general law?

Section 1092 provides that the penalty to be recovered shall be in the county where it has been incurred, but the suit to recover it shall be instituted in the name of the State of North Carolina on the relation of the Corporation Commission, and shall be instituted by the Attorney-General or the Solicitor of the judicial district in which such penalty has been incurred. Are the penalties in that section a part of the present law in relation to the enforcement of passenger rates?

Section 1099 provides that the Commission shall make reasonable and just rates.

Section 1104 shows what they shall consider in order to arrive at the making of reasonable and just rates. Can it be contended for a moment that the Legislature intended for the Corportion Commission to make reasonable and just rates and to consider all things essential to determine these reasonable and just rates so as to fix the rate at less than 2 1-4 cents, but with no power to raise it beyond that sum if it should turn out as the defendant in this case alleged in its bill of complaint in the Circuit Court that it can not live on its present charges? Is it not manifest, on the other hand, that the Legislature, having looked into the question and being satisfied that the defendant could live at the rate prescribed, determined to take the matter in its own hands and fix the rate absolutely without the power on the part of the Corporation Commission to lower or raise it, but still leaving to the railroad itself the power to reduce it below 2 1-4 cents if it sees fit.

Section 1106 provides that the Commission shall, from time to time, and as often as circumstances may require, change and revise or cause to be changed or revised any schedules or rates

fixed by the Commission or allowed to be charged by any carrier of freight, passenger or express, or by any telegraph or telephone company. Is it possible to believe that the Commission could change this rate downward and not upward, if the circumstances should require the change to be made upward? Is not the conclusion inevitable that the Legislature intended to take the whole matter into its own hands in so far as passenger rates are concerned?

In the same way it is apparent that section 1066 gives to the Corporation Commission general control and supervision of all railroads necessary to carry into effect the provisions of law, except that it shall not have any power with reference to the fixing or enforcing of passenger rates. To put any other construction upon the act in question is to overturn the manifest intention of the Legislature in order to carry out a rule that repeals by implication are not favored. If the Corporation Commission should, upon investigation, find that the legal rate now in force of 2 1-4 cents was too high and ought to be reduced to 2 cents, and seek to put said rate into effect and to enforce the penalties provided in the general law, and to this end should invite the aid of the Attorney-General and the Assistant Attorney-General to enforce the penalties, the question raised would be presented in its clearest form and there can be no doubt that the Court would hold that the Corporation Commission and the Attorney-General have by reason of the new law no power over the passenger rate and no duty to enforce the same. This construction is unconsciously sustained by the defendant's averment in paragraph 17 of its bill of complaint in the Circuit Court, wherein it alleges that the defendants in said suit will, in case it exercises its constitutional right to make charges in excess of the rate fixed by said act, proceed against it for violation thereof, and will in such case proceed to impose the penalties "prescribed by said act." This construction of the passenger rate statute is strengthened by the fact that the freight rate statute deals with the reduction of freight rates in a different fashion.

Section 1 of that act, which was ratified the 9th day of March, 1907, provides that the Corporation Commission is hereby em-

powered to reduce said local rate whenever in its opinion, and after invistigation by it, it shall determine that a lower rate is reasonable. A like provision nowhere appears in the act affecting passenger rates. Its absence is significant. The Legislature intended the Passenger Rate Act to go into effect on the date named in it and to be enforced by indictment and by the penalties prescribed in said act. The reason for doing this is apparent. The Legislature was not unmindful of what was said in *St. Louis and S. F. R. Co. v. Gill,* 156 U. S., 664. "Sometimes in acting on this subject the State Legislatures have created commissions or boards of public works with power to establish rates for the transportation of passengers and freights, and in such instances the course recommended by Mr. Justice Miller may well be followed; that the remedy for a tariff alleged to be unreasonable should be sought in a bill of equity or some equivalent proceeding wherein the rights of the public as well as those of the company complaining can be protected. But there are other cases and the present is one, where the Legislatures choose to act directly on the subject by themselves establishing a tariff of rates and prescribing penalties. In such cases there is no opportunity to resort to a compendious remedy such as a bill in equity, because there is no public functionary or commission which could be made to respond, and, therefore, if the companies are to have any relief it must be found in the right to raise the question of reasonableness of the statutory rates by way of defense to an action for the collection of the penalties."

McChord v. L. & N. R. R., 183 U. S., 484.

2. But even if the Circuit Court had jurisdiction over the subject-matter, and the parties, it could not restrain the State from proceeding to enforce her criminal laws.

Counsel for appellee in their briefs, in an effort to meet this point, undertake to show that the act under consideration is unconstitutional and that it takes the property of the road without due process of law, denies it the equal protection of the law, and otherwise offends against the Fourteenth Amendment. Even if the act were unconstitutional this would not confer jurisdiction upon the Circuit Court.

The Circuit Court can not without necessary parties determine the question as to whether any particular statute is objectionable to the provisions of the Fourteenth Amendment. The State can not be directly reached. If any statute is passed which is forbidden by the Fourteenth Amendment, whenever such statute is attempted to be enforced then it becomes the duty of the Court, which is asked to enforce the statute, to declare it void. If no effort is made to enforce it there is no power anywhere to declare the act void, except in those instances where particular persons are charged with the duty of enforcing the statute, and in doing so are about to commit some trespass against the person or property of the complainant. To hold otherwise is to hold up for examination by the Courts of the United States every police regulation of the various States. It is not to be presumed that the Legislatures are going to take property without due process of law, or to deny the equal protection of the law. On the contrary, it is not to be forgotten that it is as much the duty of the Legislatures to obey the Constitution of the United States as it is the duty of the Courts.

The Southern Railway is a Virginia corporation doing intrastate business within North Carolina, not of right but by comity. If it can defy the will of the State and hold up the execution of the State's laws until they shall have been pronounced constitutional, then the State becomes powerless to enforce her other police regulations. Laws passed against the unlawful manufacture and sale of liquor, against the destruction of child life in textile and other factories and pure food laws designed to protect the citizens against fraud and injury, will all alike have to await the determination of the Circuit Court of the United States before the State can proceed to enforce them. Whenever the power which is specially charged with the enforcement of the police authority is thus humiliated, lawlessness will not await the coming of the night, but will stalk the land in broad daytime. This result is sought to be justified on the plea of necessity, and this plea is based upon the assumption that the State Legislatures are violent antagonists of property rights. The Constitution assumes no such thing. The Supreme Court of the United States has repeatedly deprecated any such idea. It never has

occurred in the history of legislation in this country that the rates fixed by the Legislature were so outrageously low as to show bad faith and an utter disregard of constitutional restrictions. Some of them have been too low, and for them an adequate remedy can be found in the courts whenever the statutes fixing such rates are attempted to be enforced. Indeed an appeal to the court of equity appears to me to be more hazardous than obedience to the statute. If the rate is confiscatory the railroad knows it. It has in its possession all the data upon which rates are based. It has full knowledge of capitalization, of gross income, of operating expenses, and has the fullest knowledge of all the facts which go in the formation of an opinion as to the probable income of the future. If the statute is confiscatory it can safely disobey it; for it is a presumption that this fact would be found by any court that tried it. If, on the other hand, the statute is not confiscatory, then the intervention of the court of equity may mean destruction to the road, for it can not be successfully contended in this case, if the case pending in the Circuit Court shall finally reach the Supreme Court of the United States, and the statute shall be declared constitutional because the rate is not confiscatory, that the statute has not been law from July 1, 1907, and if it is law then the State can assuredly indict the agents and servants, and individuals can bring suits for penalties against the railroad for every violation occurring during the pendency of the injunction in the Circuit Court. If this be not true, then we have seen not an *unconstitutional act*, but a *constitutional* LAW made of no effect. I have always understood that the power to suspend *law* rests with the representatives of the people. If the Circuit Court has jurisdiction in this case and can restrain the State from prosecuting during the pendency of the case and can prevent the State from prosecuting after the ending of the case in favor of the State, then the authority of the States, in their exercise of the police power, becomes worthless.

It is to be observed in this connection that the cases relied on by the appellee were cases in which the Court had found that the rate was confiscatory, and therefore unconstitutional, and the jurisdictional question was therefore of less importance.

In the pending case the question as to the confiscatory nature of the rate is still an open one. The act itself has never been declared by any court unconstitutional.

It is urged upon the argument by the appellee, both orally and in the brief, that the order made by the Supreme Court safeguards the public interest. This suggestion does not aid the determination of the jurisdictional question. If the Court had jurisdiction and power to restrain the State from enforcing her criminal statutes, then this jurisdiction is independent of and would be just as strong without the protection which is safeguarded in the Court's order. If the Court has the power at all, it could have exercised it without requiring any security from the complainant; and in the law for the protection of child labor in textile factories and other manufacturing plants, the only way provided for the protection of the public or in which the public could be protected is through indictment of the owners, managers, superintendents and other chief officers of the company for permitting children under the limited age to work in the mills, and the Court could not protect the interests of the public.

It was argued by the appellee that if the Circuit Court did not have the power to restrain the State, even after a judgment of this Court declaring the rate confiscatory, the restraining order would be of no effect, and the State might still proceed with her indictments. The evil arising from such a consequence was urged as a reason for believing that the Circuit Court had the power to restrain the State from instituting criminal indictments. The conclusion does not seem to me to follow. It is not to be assumed that the States will not respect to the utmost limit the judgments of the Supreme Court of the United States. Whenever it appears to any court in any of the States of the American Union that the Supreme Court of the United States has decided any question of law or fact, that decision will be accorded absolute respect. There is no necessity for stretching the jurisdiction of the Circuit Court in order that the judgments of this Court may command the utmost respect. They have always been obeyed, and always will be obeyed. The

action of the State courts of North Carolina was taken not in opposition to the decisions of the Supreme Court, but because the State believed that the Court had held that the Circuit Court of the United States did not have the power to restrain the State. The course of the State was guided by what was said in *Fitts v. McGee.*

It was suggested during the argument that the complainant had as much right to go into the Circuit Court of the United States with its bill as it did into the courts of North Carolina, and that if it had gone into the North Carolina courts those courts would have had the power to restrain prosecutions on the part of the State. It is, of course, readily conceded that the Circuit Court had as much jurisdiction under the circumstances of this case as the State courts of North Carolina, but it is denied that the State courts of North Carolina could have restrained the State from proceeding with her indictments. If one of the Superior Courts of North Carolina, with the bill of the complainant before it, had have issued an order restraining the prosecution of the agents and servants of the Southern Railway, notwithstanding such restraining order, another Superior Court judge holding the courts in the district where the complainant's road runs, could have, and undoubtedly would have, proceeded to try the indictments found by the grand jury in the regular course of business against the agents of the railroad. When this agent was brought to his trial, he could have taken advantage of the pendency of the suit in the other Superior Court and of the restraining order only by plea in abatement to the jurisdiction of the Court trying it. When he attempted to make good the plea he would have been compelled to show both identity of subject matter and of parties, and he could have shown neither, the subject matter in the court of equity being solely the inquiry as to the confiscatory character of the rate, the subject matter in the criminal court being this and the additional question as to whether the indicted agent had violated the statute, and the parties in the equity case would have been the Southern Railway, complainant, against the Corporation Commissioners and the Attorney-General and the Assistant Attorney-General, while the parties in the criminal indictment

would have been the State of North Carolina, complainant, against the agent of the railroad company. It may be urged that this is technical, but if so it is a technicality founded in the wisdom of the law and illustrative of it.

The concurrent jurisdiction of the Circuit Courts of the United States and of the State Court is in no proper sense ever exclusive. Each of them pursues its own jurisdiction without regard to the other. Each of them can, of course, deal with the parties before the Court, and each of them will deal with the property which it has taken into its possession, and in so far as it becomes necessary to protect the property taken by such court and the persons in charge of such property, the court which first assumes jurisdiction exercises it to the fullest extent and with unlimited authority for protecting property in its possession and the officers whom it has directed to control such property. The Circuit Judge seems to have had this distinction in his mind in the opinion which he rendered in the equity case pending before him. He proceeded and counsel for appellee have argued upon the idea that the order of the Circuit Judge directing the railroad company to issue coupons for the excess of the rate charged over the rate provided for by the legislative act, had the effect of taking the railroad property into the possession of the Circuit Court and of making the agents of the railroad substantially the servants and officers of the Circuit Court. There is nothing in the bill nor in the restraining order which justifies this conclusion. The complainant in the Circuit Court was the Southern Railway. It asked not to have itself and its agents forbidden to sell tickets at the legislative rates, but to forbid the Corporation Commissioners and the Attorney-General and the Assistant Attorney-General from enforcing the rate. It would not have been a violation of the restraining order for the complainant through its agents, nor for the agents on their own responsibility to have sold tickets at the legislative rate. The coupons provided for by the order of the Court were the conditions made by the Court upon which the prayer of the complainant was granted. The coupons were only to be issued, as the coupons themselves show, for the sums in excess of the legislative rate, and if tickets were sold at the legislative rate, or even below it, no coupons were to be issued.

3. The appellee was not entitled to have been discharged under a writ of habeas corpus, because even if the Circuit Court had jurisdiction of the bill in equity and had the power to make the order restraining the State from prosecuting the criminal indictments against the agents of the railroad, there was no emergency, nothing extraordinary, no unusual circumstances calling for the writ of habeas corpus. The appellee could have made his defense in the State court. He could have availed himself of the order of the Circuit Court and could have shown, if his contention here be correct, that the State court had no jurisdiction in the premises. He need not have gone to the trouble and expense of proving the rate to be confiscatory if the effect of the Circuit Court order was to stay the hand of the State. If convicted in the police court at Asheville he could have appealed to the Superior Court of Buncombe County, where he would have been tried *de novo;* if convicted in the Superior Court he could have appealed to the Supreme Court of the State, and if the judgment had there been affirmed, he could, by writ of error, have brought his case to this court. There is in his case no question of excessive bail and no denial of any rights. It is an ordinary case of one indicted in a State court seeking to have the lawfulness of his conviction determined, not in the orderly course of procedure, but by the extraordinary writ of *habeas corpus.* If the appellee is finally discharged and this Court should finally determine when the cause reaches it that the rate is not confiscatory and is constitutional, then the appellee can not be put upon his trial for having violated the law of the State. The evil consequences which will flow from such a course are not to be overlooked. The power which is close to the people ought to be universally recognized as having authority with a strong hand to suppress crime, and it ought not to be made easy for criminals convicted in the State court to flee from those courts to the Circuit Courts of the United States and there gain their discharge. The Union is never so strong as when the States have full power in matters of police regulation, with ample authority to preserve the public peace, the public health, the public morals and the general welfare of the people within the State. With each State strong in her sovereign power within

the limits of her authority, held in an indissoluble union by interest and affection, protected by the Constitution of the United States, and recognizing that as the supreme law of the land the hope of the fathers has become a fact, and peace and domestic tranquillity will continue a more perfect union.

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